EMPLOYMENT TRIBUNALS

Claimant: **Mrs M Sabio Almeda**

Respondents: **(1) Gratte Brothers Group Limited**
(2) Mr D Gratte
(3) Mr R Suzan

Heard at: **London Central** (remotely, by CVP)

On: **12, 13, 14, 15, 16, 19 and 20 June 2023**
(and 8 and 9 August 2023 in chambers)

Before: **Employment Judge Kenward**
Mr A Adolphus
Mr P Lewis

Representation
Claimant: **in person**
Respondent: **F Husain (Solicitor)**

RESERVED JUDGMENT

1. The following complaints are not well-founded and are dismissed against all of the Respondents:
   (1) the complaints of direct sex and / or age discrimination contrary to Equality Act 2010 section 13;
   (2) the complaint of indirect sex discrimination contrary to Equality Act 2010 section 19;
   (3) the complaints of harassment related to sex and / or age contrary to Equality Act 2010 section 26;

2. The following complaints are not well-founded and are dismissed against the First Respondent:
   (1) the complaint of (constructive) unfair dismissal contrary to Employment Rights Act 1996 section 94;
   (2) the complaint as to notice pay
   (3) the complaints of victimisation contrary to Equality Act 2010 section 27

(4) the complaints of a breach of the provisions in respect of the right to request flexible working contrary to Employment Rights Act 1996 section 80G

REASONS

Introduction

1. The final hearing took place on the above seven days between 12 and 20 June 2023, when the Tribunal concluded hearing the evidence and submissions of the parties but there was insufficient time left for the deliberations of the Tribunal with the consequence that the decision was reserved on the basis that the case would be listed on 8 and 9 August 2023 in chambers (without the parties). I apologise for the subsequent delay in providing the Judgment and written reasons of the Tribunal which has been caused by pressure of work. I also apologise for the lack of this document although this partly a product of the length of the List of Issues identifying the matters to be determined in this case.

Parties to the proceedings

2. The First Respondent (the "Company") describes itself as a building services company providing a range of electrical, mechanical, security and commercial catering equipment services. The Second Respondent, David Gratte, is a director of the First Respondent. The Third Respondent, Remi Suzan, is a director of Gratte Brothers Limited and formerly had management responsibility for the Claimant.

3. The Claimant was employed by the First Respondent from 27 July 2015, initially as a Senior CAD Co-ordinator. She was promoted to Co-ordinating Engineer on the 18 April 2017. She resigned with immediate effect on 27 July 2022.

Proceedings

4. An ACAS certificate [1] was issued in respect of the First Respondent on 3 May 2022 in respect of early conciliation which began with ACAS being notified of the prospective Claim on 23 March 2022. Proceedings were commenced against the First Respondent on 8 June 2022 by an ET1 Form of Claim [2-13] with attached Particulars of Claim [14-32]. At this point in time the Claimant was still employed by the First Respondent. She was complaining that her treatment amounted to direct and indirect sex discrimination, direct age discrimination, harassment related to sex and age, and victimisation (contrary to Equality Act 2010 section 27) as well as complaining of alleged breaches of flexible working provisions pursuant to Employment Rights Act 1996 section 80H(1).

5. Following her subsequent resignation on 27 July 2022, the Claimant made an application dated 14 August 2022 to amend her Claim to include a complaint of unfair dismissal on the basis that her resignation amounted to a constructive dismissal [54-56]. Essentially, she was claiming that her treatment by the First Respondent up to her resignation, including alleged discrimination, amounted to a breach of the implied term of trust and confidence, so as to give rise to a repudiatory breach of the contract of employment. However, the application only

refers to adding an additional complaint of unfair dismissal to her existing Claim. The grounds for her resignation amounting to a constructive dismissal are set out in three sub-paragraphs headed (a) fundamental breach of contract, (b) anticipated breach of contract and breach of trust and confidence and (c) last straw doctrine, which, as headings, clearly relate to the complaint of unfair dismissal.

6. At a preliminary hearing on 24 August 2022, Employment Judge Burns granted the Claimant permission to amend her Claim to add the complaint of constructive unfair dismissal (with this subsequently being clarified in the Case Management Order as including a complaint in respect of notice pay) [57-59].

7. Paragraph 4 of the Case Management Order specifically identified the complaints which were before the Tribunal as being "*Unfair (Constructive) Dismissal (to include a claim for Notice pay), Direct Age Discrimination, Harassment related to Age, Direct Sex Discrimination, Indirect Sex Discrimination, Victimisation and a complaint under section 80H Employment Rights Act 1996 (re flexible working request)*" [57].

8. It can be seen permission was not granted to add any different types of complaint, to those set out above, such as other types of discrimination. The only types of complaint which the Claimant had been given permission to add by way of amendment were complaints of unfair constructive dismissal and notice pay. Clearly, these were complaints which post-dated the original ET1 Form of Claim, but it can be seen that the Claimant was not given permission to add any other complaints which postdated the original ET1 Form of Claim.

9. Permission was also given to add the Second and Third Respondents as additional Respondents but without "further service". In other words, the Tribunal was allowing them to be added as additional Respondents to existing complaints.

10. The Claimant was directed to provide the further information listed by the Tribunal in a Schedule [59] which included identifying which complaints were being brought against the additional Respondents and the grounds for those complaints. The heading to the "Schedule" made it clear (with wording underlined and in bold type) that, in being asked to provide a concise list setting out the basis for the complaints, the Claimant was not to "*expand on the contents of the ET1 and its attachment*". Paragraph 15 in respect of the information to be provided as the complaints against the new Second and Third Respondents simply required the Claimant to state which "*of the above claims are brought against these individuals and why?*" [59]. Again, this makes it clear that they were only being added as Respondents in respect of complaints which had already been brought against the First Respondent, and it was just a question of identifying which of those complaints were also pursued against one or both of the individual Respondents.

11. The Respondents were then directed to provide amended Grounds of Resistance including setting out any defences on behalf of the additional Respondents.

12. Accordingly, Further Particulars dated 7 September 2022 [62-74] were provided by the Claimant. It can be seen that reference is made in paragraph 6(l) to pregnancy discrimination [64] (albeit in relation to a complaint of direct sex discrimination). There was also a very generalised reference to discriminatory behaviour based on

disability at paragraph 13(l) [68] (in listing the acts or omissions relied upon as amounting to a breach of the implied term of trust and confidence) whilst paragraph 15 [70] and paragraph 15(j) [72] made reference to disability discrimination in referring to the complaints against the Second and Third Respondent. These were complaints which the Claimant had permission to add to her Claim.

13. The Further Particulars were followed by Further and Amended Grounds of Resistance on behalf of the Respondents [75-87] in which the Respondents complained that a number of the allegations were not sufficiently particularised. For example, the Claimant had set out comments which she was alleging had been made, but failed to indicate who was alleged to have made these comments, or when and where. In relation to some of the allegations in respect of which this criticism had been made, further detail eventually appeared in the Claimant's Statement of Evidence although Statements of Evidence were only exchanged on 31 May 2023, eleven days before the start of the final hearing. From the detail eventually provided, it can be seen that the Claimant was alleging that a number of the comments were not made to her, but were alleged comments about her, the source for which was an extract from a Statement of Evidence [1190] of Michele Bennett, former Head of HR for the First Respondent, with the Statement of Evidence being in support of Michelle Bennett's separate legal Claim.

14. Directions were also made by Employment Judge Burns for a List of Issues to be produced by the parties on the basis that the Respondent(s) would provide a first draft, to which the Claimant would add any missing information or changes which she required, and the parties would then liaise over producing a final List of Issues. This ultimately resulted in a combined List of Issues dated 22 November 2022 [88-104] although this also seems to have involved the claimant adding further matters to the list of issues which were not part of her pleaded case.

15. In the event, various amendments to the List of Issues were discussed at the start of the hearing, and in the course of the hearing, mainly for the purpose of identifying which complaints also involved the additional Respondents. As a result, the List of Issues identified the matters set out below.

(1) **Constructive unfair dismissal**. The List of Issues identified that the Claimant was alleging that the First Respondent breached the implied term of trust and confidence so as to give rise to a repudiatory breach of the contract of employment (thereby entitling the Claimant to resign on the basis of having been constructively dismissed) through the alleged treatment set out below.

"*(a) The First Respondent's behaviour showed discrimination by sex towards the Claimant when she got pregnant with her first child during 2018. The Claimant informed the First Respondent about it, the First Respondent told the Claimant that it will reduce her hours after her baby was born. The First Respondent does not inform the male comparators that they will have reduced hours after their baby was born. Comparators namely Mark Basker, Warren Mullem and Paul Bowcock.*

(b) The Second and Third Respondents' lack of understanding and unreasonable approach to the Claimant's first Flexible Working Application in 2018 when they made comments such as:

(i) "why should pregnant women get different treatment, I could not work at home for a year when my children (were) *born" (David Gratte);*

(ii) "'they should have made sure they could financially afford a baby before (becoming) *pregnant" (David Gratte);*

(iii) "'Marta had asked to work from home as she had just got married, they also had a large 4 bedroom house they had just purchased and can't afford the time off, but I feel it was not the business position to support her personal financial position and maybe she should not have fallen pregnant" (Remi Suzan).

(c) The First Respondent's failure to address the misbehaviour towards the Claimant in March 2020, during a meeting, Dean Robson quipped to the Claimant to "go and make the tea" in front of all the other attendees when he had clearly lost a debate with her due to his unprofessional demeanour prior to that point.

(d) The First Respondent's denial to allow the Claimant to work the core hours that she requested in September 2020 that she had previously had in place from 15th January 2019, and the comment made by Paul Starkey "it is what it is, and if you don't like it leave!".

(e) Extremely high workloads for the Claimant that were ignored.

(f) The First Respondent's demands to attend the office on Wednesdays when the First Respondent was aware that the Claimant did not have childcare for a Wednesday. When the Claimant raised this with the First Respondent she was told by Paul Starkey that she needed to attend on the Wednesday "because I say so and I pay your mortgage".

(g) The First Respondent's lack of understanding and unreasonable approach to the Claimant's need to express milk on days in the office. To include failing to provide initially an appropriate place for this to occur; and for failing to permit the Claimant to leave a meeting on a Monday in March 2022 when she was uncomfortable as a result of leaking milk.

(h) The First Respondent's negative attitude to the Claimant working from home and making it known to the Claimant that this would impede her prospects of ever getting a promotion again.

(i) The First Respondent's constant monitoring of the Claimant's work/time when she was working remotely.

(j) The First Respondent's failure to deal with the Claimant's flexible working request reasonably, fairly and in line with other colleagues.

(k) The First Respondent's failure to accept the basis of the Claimant's grievance raised on 1st March 2022 and address the Claimant's issues.

(l) The First, Second and Third Respondents' pattern of discriminatory behaviour towards the Claimant based on her age, sex, maternity leave and disability.

(m) The First and Third Respondents' constant slander towards the Claimant, as shown in comments such as:

(i) "you wouldn't have a clue of what you are looking at" (Remi Suzan);

(ii) "all she does is shout and the whole situation really affects me" (Glenn Sheldrake);

(iii) "her email and phone communication to myself and Glenn can be quite aggressive, blunt and possibly rude" (Paul Starkey);

(iv) "she tends to be more aggressive if things aren't going her way or she disagrees" (Paul Starkey);

(v) "there is an element of twisting words and interpretations to suit herself" (Paul Starkey);

(vi) "she keeps coming to my office shouting about her job description" (Glenn Sheldrake).

All made during meetings and reflected in the meeting minutes.

(n) Despite the First Respondent being aware of the Claimant's mental health issues (see Consultant Psychiatrist Report dated 22nd March 2022) when the Claimant contacted the First Respondent, including on the 14th February 2022, for support she did not receive support only demands to complete her workload.

(o) The First Respondent's failure to implement the recommended adjustments as contained in the report from Occupational Health Consultant.

(p) The First Respondent's act of victimisation towards the Claimant by the act of suspension on the 8th of July 2022, which was not a neutral act, but one of recrimination towards the Claimant for raising the Early Conciliation and the subsequent ET1 as stated on the First Respondent's letter dated 8th July 2022 and as the First Respondent's representative from Croner stated in the recorded investigation meeting dated 13th July 2022.

(q) The First Respondent's failure to put on hold the investigation against the Claimant that started on 11th July 2022, until the grievance for victimisation that the Claimant raised on the 11th July 2022 including any appeal was concluded. Those acts (involved a) *lack of impartiality and the Claimant considered them further victimisation.*

(r) The First Respondent's failure to lift the Claimant's suspension upon receipt of the outcome of their investigation, on the 22nd July 2022. The Claim was dismissed in its entirely and mediation was proposed as a recommendation in the outcome.

The Claimant remained suspended from work, this shows that the suspension of the Claimant was not a "neutral act to allow the Respondent to carry out the investigation" as per the First Respondent's allegation but instead was an act of victimisation.

(s) The First Respondent's lack of empathy towards the Claimant. Despite the First Respondent having been aware of the Claimant's severely damaged mental health, they led the Claimant to believe that the possibility of a disciplinary hearing was still available for an entire week after they received the outcome on the 22nd July 2022 where it was stated: "there is no case to answer and this matter should not proceed to a disciplinary hearing". The First Respondent only sent the outcome to the Claimant after she resigned and only because she asked for it.

(t) The First Respondent failure to allow the Claimant to raise an appeal for the grievance procedure within 5 days. The First Respondent sent a letter to the Claimant on 27th July 2022 requesting her to fill up a consent form to start mediation ASAP before the 5 days for her to raise an appeal were concluded, failing to follow the ACAS code of practice and the First Respondent's own grievance procedure. The Claimant felt this was another act of victimisation and this was the 'Final Straw' that led to the Claimant's Resignation.

(u) The Claimant raised the concerns in an informal way prior to raising the grievances and the First Respondent took no action about them.

(v) The First Respondents failed to fulfil their duty of care towards the Claimant.

(w) The First Respondent refused to look into some of the allegations raised in the grievance.

(x) The First Respondent failed to do reasonable adjustments.

(y) The First Respondent failed to follow the ACAS procedure for the grievance.

(z) The First Respondent made unreasonable changes to the Claimant working patterns without agreement".

(It should be noted that the alleged treatment set out at (a) to (t) above appears as part of the Claimant's pleaded case set out in the Further Particulars [66-69] which she was directed to provide by Employment Judge Burns whose Case Management Order required the Claimant to list the acts or omissions relied upon as breaches of contract by the Respondent which she says caused her to resign [59], whereas the alleged treatment at (u) to (z) did not appear as part of the Claimant's pleaded case in her Further Particulars but appeared to have been added by the Claimant to the List of Issues [93]).

(2) **Harassment related to sex**. The List of Issues contained two lists of complaints which really amount to complaints of harassment related to sex. As such, the List

of Issues first identified that the Claimant was complaining of harassment related to sex through the alleged treatment set out below.

"*(a) The First Respondent's denial to permit the Claimant to leave a weekly team meeting in order to express milk as she was leaking milk. This amounts to sex related harassment.*

(b) The Respondents (Paul Starkey) *asked the Claimant to explain to him how does the woman's body work in relation to the breastfeeding. This amounts to sex related harassment.*

(c) The Claimant was told (by Dean Robson) during one meeting to go and do the coffee after she raised some concerns about a project.

(d) The Second Respondent (David Gratte) stated "they should have made sure they could financially afford a baby before coming pregnant" referring to the Claimant and her husband, after she issued a flexible working request. This amounts to sex related harassment.

(e) The Claimant was told by the Second Respondent (David Gratte) *that she will not be able to take care of her children properly.*

(This complaint was subsequently withdrawn).

(f) The Second Respondent (David Gratte) *stated "she should not have fallen pregnant"*.

(This complaint was subsequently withdrawn).

(g) The Third Respondent (Remi Suzan) *stated "if you wouldn't have had children, you wouldn't have worked from home and nothing of this would have happened*".

(3) **(Further) harassment related to sex**. The List of Issues then identified further complaints of harassment related to sex through the alleged treatment set out below.

"*(a) The First Respondent failed to provide an appropriate private space to express milk violating the Claimant's dignity.*

(b) The First Respondent constantly monitored the Claimant.

(c) At various times throughout the Claimant's employment, including during her first pregnancy and second pregnancy the Claimant had excessive workloads.

(d) The First Respondent's slander (of) *the Claimant with other employees.*

(e) The First Respondent's vitriolic behaviour towards the Claimant.

(f) The First Respondent (Tom Delves) shared private and confidential information from the Claimant without her consent and knowledge.

(g) The First Respondent (Paul Starkey) *made a comment to the Claimant's husband (who is also an employee of the First Respondent) that "he gets the bonus twice".*

(h) The Claimant was suspended from work without warning for no valid reason".

(4) **Direct sex discrimination**. The agreed List of Issues identified that the Claimant was complaining of direct sex discrimination through the alleged treatment set out below.

"*(a) From the commencement of the Claimant's employment and continuing throughout during meetings as well as in emails the First and Second Respondents referred to the Claimant as "Gents".*

(This complaint was subsequently withdrawn).

(b) The First Respondent's failure to announce the Claimant's promotion in April 2017; and failure to notify the Company's IT Department to update digital signatures. Unlike happens with her male colleagues.

(The Claimant compared her treatment with that of actual male comparators namely Warren Mullem, Paul Starkey and Glenn Sheldrake).

(c) The First Respondent's constant monitoring of the Claimant whilst she was working from home.

(d) At various times throughout the Claimant's employment, including during her first pregnancy and second pregnancy the Claimant had excessive workloads imposed by the First Respondent.

(The Claimant compared her treatment with that actual male comparators, with David Hines being specifically identified, on the basis that they were only required to deal with one project at a time, whereas at various times, including late 2018 and early 2019, the Claimant was expected to deal with more than one project at a time).

(e) The Claimant was repeatedly asked to attend the office on a different day than the one stated on the contract with a short notice. Male colleagues that were regularly working from home did not have to attend the office at short notice on an alternative day.

(f) The First Respondent's repeated demands for the Claimant to attend the office on another day if there was some reason she was not going to attend on a Monday. For example, Bank Holiday.

(The Claimant compared her treatment with that of actual male comparators in that she stated that colleagues who were regularly attending the office were not asked the same, namely Matt Figgis, Neil Bakewell, Mark Basker, Paul Starkey and Glenn Sheldrake).

(g) The First Respondent's denial to permit the Claimant to undergo her appraisal remotely via video conference, rather than face to face. Some male colleagues were allowed to do so.

(The Claimant compared her treatment with that of actual male comparators, namely Aaron Burton and Warren Mullem).

(h) From the Claimant's return from maternity leave she was asked to undertake work beneath her grade and responsibility.

(The Claimant compared her treatment with that of an actual male comparator, namely Warren Mullem).

(i) At various times throughout the Claimant's employment she was denied the right to carry over more than 5 days annual leave at the end of the calendar year. Therefore, the Claimant lost annual leave entitlement.

(The Claimant compared her treatment with that of an actual male comparator, namely Aaron Burton).

(j) The Claimant was told by the Third Respondent (Remi Suzan) *that having had children and working from home had damaged her relationship with the First Respondent.*

(k) The First Respondent's failure to permit the Claimant to undertake training and CPD, in particular to apply for Chartered Institution of Building Services Engineer's Membership during working hours when the First Respondent had permitted male colleagues to do so.

(l) The First Respondent's denial to permit the Claimant to leave a weekly team meeting in order to express milk as she was leaking milk. This is also pregnancy discrimination as the need to express milk arose as result of the pregnancy.

(m) The Claimant was excluded from projects gatherings where all the other males were invited.

(n) The Claimant's mental health was not taken (into) *consideration, despite the Company having an occupational health report, unlike the mental health of her male colleagues*".

(5) **Direct age discrimination**. For the purposes of this complaint, the Claimant described herself as below.

"*The Claimant is in her 30's. She is in an age group of employees with at least 30 years' service until likely retirement date. She compares her treatment to that of employees in the age group of those who are older than their 30's*".

The Claimant relied upon older colleagues, Peter Dibbens and Karl Doyle, as comparators.

The List of Issues also identified that the Claimant was complaining of direct age discrimination through her alleged treatment by the First Respondent in that the "*First Respondent failed to approve a flexible working request because of the Claimant was "still too young"*".

For these purposes, as evidence of the reason for the flexible working request having not been approved, the Claimant relied upon the contention that "*the Third Respondent told the Claimant during an investigation meeting that she was "still too young" for the First Respondent to grant a flexible working request on a permanent basis*".

(6) **(Further) direct age discrimination**.

The List of Issues identified that the Claimant was complaining of direct age discrimination through the alleged treatment set out below.

"*(a) The Claimant's appeal for flexible working dated 4th January 2022 was denied on 15th March 2022 and following appeal on 18th March 2022. This amounted to discrimination as the First and Third Respondents were choosing to treat the Claimant less favourably because she had raised a formal grievance complaint on the 1st March 2022.*

(This complaint was subsequently identified as really being a complaint of victimisation and had also been included in the agreed List of Issues as a complaint of victimisation).

(b) The First Respondents' decision to suspend the Claimant on full pay was an act of (age) *discrimination.*

(c) The First Respondent's decision to carry out an investigation surrounding the employer/employee relationship was an act of (age) discrimination.

(d) The Claimant was not provided with a fair and/or an impartial investigation.

(e) The Claimant was put under unnecessary stress that ended up damaging her mental health.

(f) The Claimant suffered injury to feelings.

(g) The Claimant was not allowed to communicate with any of her work colleagues for no valid reason.

(6) **Harassment related to age**. The agreed List of Issues also identified that the Claimant was complaining of harassment related to age through "*comments made to the Claimant about her being "too young"*".

(7) **Indirect sex discrimination**. The Claimant relied upon the First Respondent having a provision, criterion or practice ("PCP") by which "*the First Respondent*

insisted that the role of Co-ordinating Engineer must be done between 8.30 a.m. and 5.00 p.m. and/or is office-based".

The Claimant's case was that the alleged PCP put women at a particular disadvantage compared to men because women are less likely to be able meet such a working pattern due to childcare responsibilities, and that she herself was put to this disadvantage.

The position of the First Respondent was that it was industry practice for working hours to be between 8.30 am and 5.00 pm and for the Co-ordinating Engineering role to be office-based, but that it did not insist upon this as there was the opportunity to make applications under the Flexible Working Policy "*which were objectively considered*". In the alternative, the First Respondent relied upon a defence of justification on the basis that that "*adopting the industry norm but allowing for objective consideration of individual requests under the Flexible Working Policy was a proportionate means of achieving the legitimate aim of operational needs and business efficiency*".

(8) **Victimisation**. The Claimant relied upon her grievance dated 1 March 2022 as amounting to a protected act on the basis that it made complaints of discrimination and harassment. She complained that she had been victimised because she had done this protected act. The List of Issues identified that she was complaining of victimisation on the basis of the alleged treatment set out below.

"*(a) The Claimant's appeal for flexible working dated 4th January 2022 was denied on 15th March 2022 and following appeal on 18th March 2022. This amounted to victimisation as the First Respondent was choosing to treat the Claimant less favourably because she had raised a formal grievance complaint on the 1st March 2022.*

(b) The First Respondent's decision to suspend the Claimant on full pay was an act of victimisation.

(c) The First Respondent's decision to carry out an investigation surrounding the employer/employee relationship was an act of victimisation.

(d) The Claimant was not provided with a fair and/or an impartial investigation.

(e) The Claimant was put under unnecessary stress that ended up damaging her mental health.

(f) The Claimant suffered injury to feelings.

(g) The Claimant was not allowed to communicate with any of her work colleagues for no valid reason".

(9) **Flexible working**. The List of Issues identified the complaints set out below.

(a) "*Did a Respondent made a comment to the Claimant directly related to the Claimant's age and flexible working? The Claimant relies on the fact that the Respondent has given as a reason for not granting the Claimant's flexible working request that the Claimant is "still too young"*".

(b) "*Was the investigation impartial? The Claimant says the investigator during the investigation meeting told the Claimant that they (the First and Third Second Respondents) will not grant flexible working, showing that the decision was made prior the investigation took place*".

(c) "*Did the decisions taken, follow the same principles as for the rest of the First Respondent's employees?*"

16. The List of Issues also identified potential time limits issues. The Respondents submit that a number of the allegations that the Claimant has raised are out of time so that it is contended that the Tribunal does not have jurisdiction to consider any complaints as to matters which arose on or before 23 December 2021 (three months prior to ACAS being notified of the prospective Claim on 23 March 2022). The position of the Claimant is that any such matters form part of conduct extending over a period of time up to a date less than three months before the commencement of early conciliation and, if not, then it would be just and equitable to allow any complaints which are out of time to proceed. In any event, it was the Claimant's case that the previous history of alleged discrimination amounted to relevant evidence in support of any complaints of discrimination which were found to be within the jurisdiction of the Employment Tribunal, with reliance being placed upon Anya v University of Oxford [2001] IRLR 377, CA (see below).

17. Strictly speaking, the analysis by which a complaint would be in time so long it related to an act or omission which occurred on or before 24 December 2021 would appear to be flawed. For this to be the case, the Claimant would need to have issued proceedings within one month of receiving the ACAS certificate which was on 3 May 2022 [1]. In fact, the ET1 Form of Claim was not filed until 8 June 2022. It follows that the Claimant is unable to avail herself of the extension of time under Employment Rights Act 1996 section 207B(4) as following the receipt of the ACAS certificate, the ET1 Form of Claim was not filed within the requisite further period of one month. As such, the extension of time the purposes of early conciliation which applies in the Claimant's case is only that under Employment Rights Act 1996 section 207B(3) so that the period beginning the day after the early conciliation request is received by ACAS up to and including the day when the early conciliation certificate is received or deemed to have been received by the prospective Claimant is not counted. This period of time amounts to 41 days. It follows that the normal time limit of three months is extended by 41 days. Applying the basic time limit of three months would mean that, at the point in time when she issued proceedings on 8 June 2023, any complaint about an act or omission which occurred after 9 March 2022 would be in time. Adding an extra 41 days takes this date back to 27 January 2022. Thus, any complaint about an act or omission which occurred on or before 26 January 2022 would be outside the primary time limit of three months. However, whether the cut-off date is 26 January 2022 or 24 December 2021 probably makes little difference in that there do not appear to be

any specific complaints for which the time limit could be said to run from a date between those two dates.

18. The List of Issues also sought to identify issues with regard to remedy, should they arise. This included an issue as to whether or not there had been any relevant failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures. The Tribunal proceeded on the basis that it would deal with the issues of liability first and that any issues as to remedy would be addressed in the light of the outcome of any decision as to liability.

Evidence

19. The Case Management Order of Employment Judge Burns had also made provision for disclosure of documents. Lists of relevant documents were to be exchanged by 3 March 2023 with provision for each party to request copies of documents with copy documents then being provided within seven days of the request. The parties were then to agree the content of a Bundle of documents for the final hearing which was originally ordered to be restricted to 500 pages. The First Respondent was to provide the Claimant with a copy of the agreed Bundle by 12 April 2023. Statements of Evidence were to be exchanged by 12 May 2023. Originally, these were subject to a maximum word count (5000 words for the Claimant and 3000 words for each other witness).

20. There were delays on the part of the Respondents in complying with the timetable which had been set out in the Case Management Order, as well as disagreements between the parties over both the adequacy of any disclosure made by the Respondents and the content and order of the Bundle particularly having regard to the page restriction. This had resulted in the Claimant making an application to strike out the Response on 22 May 2023 which was considered by Employment Judge Burns on 25 May 2023 who made an Unless Order in respect of the Respondents providing the final Bundle by 29 May 2023. Employment Judge Burns further directed that Statements of Evidence be exchanged by 31 May 2023. In relation to the content of the Bundle, his directions were as set out below.

    "*If the Claimant on receipt is unhappy with any final trial Bundle sent to her by the Respondents she should then compile and serve on the Respondents as soon as possible thereafter a supplementary Bundle and then apply to the Tribunal at the beginning of the trial for permission to rely on those documents*".

21. In fact, by the time that the Unless Order was made, the Claimant had herself e-mailed a Bundle to the Respondents. The Respondents then e-mailed a Bundle to the Claimant on 27 May 2023 but had to do so by way of a series of e-mails each attaching a part (100 pages in length) of the Bundle. In fact, the Claimant was to suggest that the Respondent had omitted to send an attachment with the last of the 12 e-mails so that she was missing one part (or 100 pages) of the Bundle. The Claimant e-mailed the Respondents regarding this on 27 May 2023 and 30 May 2023 and also e-mailed the Tribunal on 30 May 2023. In the circumstances, she proceeded on the basis that she was unable to use the Bundle prepared by the Respondent as it was missing 100 pages and instead e-mailed the Respondents a link to her Bundle, which she stated that she would be using, and would be

applying to the Tribunal for permission to do so. By way of replying, the Respondents had stated that they would re-send all ten parts of the Bundle again to the Claimant, which they stated had been sent on 27 May 2023, with the Respondents suggesting that it had complied with the Unless Order, and the Claimant was "*being unduly melodramatic*". It was claimed that the part of the Bundle which the Claimant referred to as having been missing had originally been sent to her as a link but, in any event, the entire Bundle had subsequently been re-sent to her. The Claimant's position then appeared to be that she could not work from the Respondents' Bundle as it contained "*edited documents and Company policies that have been updated months after I have stopped working for the Respondent*", and the "*information is not in chronological order and even contains documents under the heading "Claimant's additional information" where they are not documents I have requested at all*". The Claimant was also indicating that her Statement of Evidence contained "*new matters*" and was intimating that "*I will be requesting an amendment of my ET1 at the hearing*", although the precise basis of any possible proposed amendment was not clear or set out at this stage beyond contending that her constructive dismissal also amounted to a discriminatory dismissal.

22. This correspondence between the parties had been referred to Employment Judge Burns who directed, as communicated to the parties by a letter dated 7 June 2023, that any further issues or complaints about the Bundles and Statements of Evidence should be raised by the parties at the beginning of the final hearing and not sent to him. The issue of any amendment to the Claim was not subsequently raised at the beginning of the hearing, although there was a lengthy discussion as to any amendments needed to the List of Issues, in particular, so as to identify the specific Respondent(s) being complained about in each individual complaint.

23. In the meantime, on 29 May 2023, the Claimant had also made an application to increase the restriction on the number of pages for the Bundle and the number of words for her Statement of Evidence. The application was allowed by Employment Judge Burns in so far as he lifted the page limit for the Bundle, but the restriction on the length of the Claimant's Statement of Evidence remained, with any increase in the length of the Statement having been opposed by the Respondent. In the decision letter, Employment Judge Burns stated that "*it will be better for all concerned if the Claimant focuses on the issues and the current limit of 5000 is sufficient for that*". In the event, the Claimant's Statement of Evidence was actually a little over 6000 words in length, but no further issues were taken by the Respondents with the length of the Claimant's Statement of Evidence. Moreover, as the Claimant pointed out, one of the Statements of the Respondents' witnesses significantly exceeded the permitted word count of 3000 words, although she specifically stated that she did not seek to oppose this.

24. The failure to achieve agreement over a joint Bundle meant that, at the start of the final hearing, the Tribunal had a Bundle from the Respondent which was 1018 pages in length, and one from the Claimant which was 1008 pages in length, with each Bundle having been sent to the Tribunal in instalments of approximately 100 pages at a time. Against this background, at the start of the hearing there was an application for the hearing to be adjourned which was made on the half of the Respondents on the basis that the position in respect of the evidence and

documentation before the Tribunal was such that the hearing was not in a position to proceed. In particular, reference was made to the difficulties which the witnesses would face having to navigate the documentation which was spread out across two separate Bundles. It was suggested that the directions of the Tribunal had been clear to the effect that, if the Claimant was going to produce a supplementary Bundle, it should have consisted only of documents which were not in the Bundle produced by the Respondents, rather than effectively creating a completely new Bundle. The Claimant strongly opposed the application for an adjournment. Her position was that the need to produce a separate Bundle had arisen because of the Respondents' failure to comply with the directions regarding the production of an agreed joint Bundle. She indicated that, if necessary, she could effectively edit her Bundle so as to create a Bundle which was genuinely a supplemental Bundle. In the event, Mr Husain also indicated that arrangements could be made for a single consolidated version of the Respondents' Bundle to be provided.

25. In these circumstances, the Tribunal was not satisfied that it would be consistent with the overriding objective for the case to be postponed. The Information contained in the two Bundles was effectively before the Tribunal. The issue related to the practicalities of navigating that information during the hearing. The format in which the Tribunal had the documentation would not prevent it from spending the rest of the first day doing any necessary pre-reading. If there were any issues with the witnesses finding documents then potentially the Tribunal could seek to resolve any such issues by using the screen sharing facility so that a witness could be directed to a document by the document being shared on the screen. In any event, if the remainder of the first day was spent with the Tribunal doing any necessary reading, it appeared likely that there would be a single electronic copy of the Respondents' Bundle available for when the evidence commenced on the second day, by when the Claimant would have been able to provide a supplemental Bundle containing the documents from her Bundle which were not in the Respondents' Bundle. For these reasons, the Tribunal rejected the Respondents' application to adjourn the hearing and proceeded on the basis set out above.

26. Thus, by the time that the evidence started, the Tribunal was able to work from a main Bundle of 1018 pages which had been compiled by the Respondents and an additional Bundle of 229 pages which had been compiled by the Claimant, which was both separately paginated and also had page numbers running on from the end of the main Bundle as pages 1019 to 1247. In these Written Reasons page references are in square brackets with references to pages from 1019 onwards obviously being references to the supplemental Bundle obviously being references to the supplemental bundle.

27. The Claimant relied upon her written Statement of Evidence as well as giving oral evidence on her own behalf. The Claimant had also kindly updated her Statement so that page references, where possible, were to the revised Bundle rather than alternative Bundle. The Respondents relied upon written Statement of Evidence from the Second and Third Respondents themselves and from Paul Starkey (Mechanical Design Director who led the department in which the Claimant worked), Angela Foster (Senior Human Resources Business Partner), and Tom Delves (Human Resources Manager). These witnesses also gave oral evidence. In these Written Reasons, references to specific paragraphs in the Statement of

Evidence appear in brackets with the paragraph number preceded by the prefix "C" for the Statement of Evidence of the Claimant, and by the initials of the witness concerned for the other Statements of Evidence.

28. The Claimant relied upon transcripts of recordings of a number of meetings where she had not made the other participants aware of the recordings being made or sought their consent. The explanation given by the Claimant to the Tribunal for having covertly recorded a number of meetings was that this "*had not been done with the intention of entrapment or gain a dishonest advantage*" but "*to keep a record; to protect myself from any risk of being misrepresented when faced with an accusation or an investigation; and to enable me to obtain advice from ACAS and the internet forums*" (see paragraph 6 of the Claimant's written submissions).

Findings of fact

29. The Claimant commenced her employment with the First Respondent (the "Company") on 27 July 2015 in the position of a CAD Coordinator.

30. When the Claimant commenced working, she was the only female in her department. The Claimant has provided a number of e-mails, by way of example, which show, at least in the period between 2016 and 2018 that circular e-mails would be sent to members of staff, by both Paul Starkey and Glenn Sheldrake with the e-mails collectively addressing the recipients as "*Gents*" [335-336].

31. In about June 2016, the Company started to give the Claimant the responsibilities of a Junior Mechanical Design Engineer. She was given this description in a corporate CV / publicity material sent to clients [129]. However, this did not, at this stage entail a formal promotion. On a number of occasions, she complained to Paul Starkey, who was the Manager to whom she reported, and to Remi Suzan, who was the Director responsible for her, about not being promoted despite doing the role of a Junior Mechanical Design Engineer. In particular, in completing the appraisal form for her appraisal with Paul Starkey on 20 March 2017 [639-642], she suggested that her most important aim was to be able to change the job title, "*as promised in my appraisal last year*" [640] although Paul Starkey then noted alongside this that this was "*based upon 12 months review*". He also completed the form to indicate that she was working at a Co-ordinating Engineer's level on projects on which she was working [639].

32. The comments added on the 2017 appraisal form by Paul Starkey included the medium-term objective of applying for CIBSE (Chartered Institution of Building Services Engineers) membership [642].

33. Although the Claimant suggests that she was ignored when she raised her discord (at not being promoted) [C8], with this creating a hostile, uncomfortable and degrading work environment, it is to be noted that, on 18 April 2017, within a month of the appraisal at which she had raised the issue, she was promoted, albeit to the role of Coordinating Engineer (rather than Junior Mechanical Design Engineer) with effect from 1 April 2017 [644]. The role of Coordinating Engineer was a new role created by Remi Suzan [262]. In promoting the Claimant to this role, Remi Suzan did so on the basis that there were two aspects to the role, namely the management of the process of producing product drawings, which he considered

to be the Claimant's strength, and the engineering part of the role in respect of which he considered her to lack knowledge, qualifications and experience, but in respect of which she would need to work with others so as to develop the requisite understanding of the engineering side [262].

34. The differences between the role of a CAD Coordinator and that of Coordinating Engineer were analysed by a consultant from Croner Face2Face as part of the later grievance appeal investigation report [363-364] by reference to the job overview and job purpose of the two roles with there being considerable overlap in that a large proportion of the job purpose of a CAD Coordinator also appeared under the job purpose for a Coordinating Engineer. As such, it was within the role of Coordinating Engineer to be doing CAD coordination. He also undertook a similar analysis in relation to the key areas of responsibility for the two roles again demonstrated a significant degree of "crossover" so that 50% of the key areas of responsibility for the CAD Coordinator role also included within the key areas of responsibility for the Coordinating Engineer.

35. The nature of the work done by the department in which the Claimant worked was described by Glenn Sheldrake when interviewed as part of the later grievance appeal investigation [468], as set out below.

"*Yeah, I mean a CAD resource is a generic name, we are called the CAD department and if another department says to me, I've got a project, Glenn, I need a CAD resource, it's the generic name for that resource to produce what we do in our department, which is drawings, so, a CAD resource could be the whole team, which would be a senior Coordinating Engineer, a Coordinating Engineer, a Coordinator, and a tracer. So, it is the team, it's the collective name, the computer-aided design. We are GBTS and predominantly we produce CAD drawings, that's what we do, that's our output, so it's a collective name for what we do*".

36. The Claimant complains that, initially she was not awarded a salary increase with this promotion, but after complaining about it, she received a pay rise of 2.4% on 13 June 2017 [645]. The Claimant seeks to make the point that this was more in line with previous annual pay rises which she describes as inflation based. However, she did receive a pay rise at more or less the same time as her promotion in that she was notified on 7 April 2017 that her salary had been increased as part of the annual discretionary pay review, and the new salary was to take effect from 1 April 2017 [643]. The letter of notification told her that the next pay review would be on 1 April 2018 [643]. On 18 April 2017, she was notified that, further "*to recent discussions*", it was being confirmed that, with effect from 1 April 2017, her job title changed to that of Coordinating Engineer [644]. Then, on 13 June 2017 she was notified that, following "*your recent discussion with your line manager*" she was receiving a further salary increase to be backdated to 1 April 2018. In other words, contrary to the point that the Claimant was seeking to make, the pay rise was on top of the regular pay rise through the annual review.

37. The Claimant was subsequently to point out that there was no circular or group e-mail to other employees confirming her promotion and has provided examples of such e-mails being sent in relation to other promotions, for example when Anthony Chung was appointed as CAD Resources Supervisor in 2015 [324], Warren

Mullem was promoted to Coordination Engineer in 2015 [324] and Paul Starkey was promoted to Design Manager in 2016 [324]. There is also an example from 26 July 2021 [1211] which involved David Gratte sending a group e-mail "*to confirm the following promotions across the Group's operating companies*". In addition to announcing the promotions of Paul Starkey to Mechanical Design Director and Warren Mullem to Senior Electrical Coordinating Engineer, it can be seen that those being promoted included Tatiana Ceban, who was promoted to Intermediate Mechanical Estimator, and Natasha Baker who was promoted to Service & Operations Director.

38. The issue was raised with Glenn Sheldrake during a grievance investigation meeting [469]. His response seemed to accept that the normal practice was that the department concerned would provide HR and marketing with the news of somebody being promoted, which would normally lead to the Managing Director sending out a group e-mail with the news of the promotion. As such, his response was not really able to explain the absence of this having happened in the Claimant's case, although he suggested that it was not an issue raised by the Claimant at the time and, had it been, then he would have addressed it with HR and said "*what's going on here, guys?*" [469].

39. The Claimant points out that no steps were taken to amend the digital signature on her e-mails so that reference was made to her new job title. In fact, she sent an e-mail herself to IT requesting that footer to her e-mails be changed to show her title as that of Coordinating Engineer [326].

40. In her 2018 appraisal, which was conducted with Paul Starkey on 23 February 2018 [646], the Claimant raised an issue on the appraisal form regarding the "*differences with the salaries with my colleagues that are at the same level* (as) *me*" [648]. In her Statement of Evidence [C9], she complained that the Respondents failed to address the issue at the time. The written comments of Paul Starkey on the form were that "*salaries are not part of the appraisal process and the job description for Coordination Engineer does not allow Marta to compare her position with others in the industry*". The Claimant had completed the form to state that her most important aims for the next 12 months were to "*have the pay rise according to my role and the amount of work I do*" and to "*be given a bigger project where I can show my hard work again*". Paul Starkey's written comments on the form regarding the Claimant's aim to have a pay rise were "*to be reviewed*". This would seem to be consistent with the fact that the Company's annual salary review normally took place around the end of March. Thus, on 29 March 2018, the Claimant was notified that she had been awarded a salary increase effective from 1 April 2018 [651]. This has been calculated as a pay rise of 6.8% which the Claimant herself accepts was substantially more than the salary increases received by her colleagues which were between 1% and 3% that year. The Claimant has linked the timing of her substantial pay rise to the "*publishing of the 1st pay-gap report requested by the Government, on April-2018*" [C10], but the fact is that it was made at a point in time when the Claimant was clearly requesting a significant pay rise and at the point in time when salaries were scheduled to be reviewed.

41. The comments added on the 2018 appraisal form by Paul Starkey recorded that "*CIBSE membership application is ongoing*" [646]. The point made by the Claimant in the Particulars of Claim would seem to be that it was not possible ultimately to

progress it in work time as she had too much work. The form included a review of the training undertaken during the last twelve months [646]. The comments of Paul Starkey in relation to CPD were that the Claimant had found CPD very useful for expanding her skill set [647]. In her comments, the Claimant suggested that although BSRIA (Building Services Research & Information Association) courses had been mentioned in the previous year's appraisal, when she had asked for permission to attend one, it had not been granted [649]. She also raised the issue of being trained in Revit (a type of building design software) and she expected that this software would be used in forthcoming projects [648]. The comments added by Paul Starkey suggested that BSRIA courses and Revit training were being arranged.

42. In a meeting in September 2018, the Claimant told Remi Suzan that she was pregnant. She asked about the maternity policy and the procedure that she needed to follow. The reply of Remi Suzan was that he was not sure as he had never had to deal with it previously and he asked her to speak with the HR department. It seems that the Claimant was then told by HR that she needed to submit form MAT-B1 to HR, with this being a form with which she would be provided by her GP.

43. At this point in time, employees of the Company who were on maternity leave only received statutory maternity pay. However, ultimately, more generous provision was introduced as a result of the Claimant's pregnancy so that she became the first employee entitled to receive twelve weeks full contractual pay followed by statutory maternity pay [134].

44. In early October 2018, the Claimant asked Remi Suzan to be allowed to work from home four days a week for a year after her maternity leave, to allow her to breastfeed her baby. She was told to speak with HR, which she did immediately and was told this would be a decision for Remi Suzan as he was her Director. The Claimant is critical of HR for having failed to inform her about any need to raise the request formally and that a meeting would need to be held.

45. In her Statement [C13], the Claimant says that in early November 2018 Remi Suzan told the Claimant, without having previously consulted her to see if this was what she had wanted, that the Company would reduce her hours and salary upon her return from maternity leave. When the Claimant stated that she was not happy with this, she complains that she was subjected to comments such as "*we will monitor you closely and if you are not able to cope we will then reduce your hours*", "*you will not be able to work and look after a child*" and "*you don't have a clue what it is to have a kid*''.

46. In support of these allegations, the Claimant refers to a number of documents, including minutes of a meeting on 23 November 2018, extracts from a grievance investigation report into complaints made by Michelle Bennett of HR and extracts from a Statement of Evidence of Michelle Bennett in support of her own subsequent Employment Tribunal Claim.

47. The Claimant suggests that, since she opposed the suggested reduction of hours and salary after maternity leave, Remi Suzan "*intended to demote me upon my return*" [C14]. The Claimant is referring to an e-mail dated 15 November 2018 sent

by Remi Suzan to various managers including David Gratte, Glenn Sheldrake and Paul Starkey. The e-mail was seeking to arrange a meeting to discuss requests which the Claimant had made earlier that day regarding maternity pay, maternity leave and working from home. The Claimant was asking to work from home for a period of one year. She was also asking what "*are we prepared to offer in terms of hours whilst working at home?*" Remi Suzan stated that there "*has been some discussion of her working hours reducing to start the process and then upping or dropping the hours to suit*". He stated that the Claimant "*is opposed to this as she believes she should start at her normal hours and reduce down if it proves too difficult to maintain*". Remi Suzan was asking whether the Claimant can "*work as an Engineer from home or should we change her role to that of a CAD Operator which will be easier for her to do remotely and easier for us to monitor*" [653].

48. The Claimant then seems to have gone to see Michelle Bennett of HR. Michelle Bennett was to describe her involvement in a document from which an extract (paragraphs 3.11 to 3.40 only) has been provided by the Claimant in her supplementary Bundle [1190-1195] (the index to which describes the document as an undated extract from a witness statement of Michelle Bennett. This is a document which Michelle Bennett would appear to have provided in support of her own Claim to the Employment Tribunal. In fact, although it has been described in the present proceedings as a Statement of Evidence, it reads more like Michelle Bennett's Particulars of Claim in that it refers to Michelle Bennett as the Claimant in the third person.

49. In this Statement, Michelle Bennett describes the Claimant coming to see her and explained that "*due to her financial situation she could not take full maternity leave and was planning to only take 2 weeks*" [1190]. Michelle Bennett stated that the Claimant told her "*she has asked … her manager to work from home for 12 months so that she could breastfeed her new born*". Michelle Bennett says that the Claimant said "*that she was told by her manager that she could not work from home and that she … may not want to work from home if she had a troublesome baby*". The Claimant was stated to have "*explained she had objected against this and was ultimately told to resign her job*" [1190]. The Claimant was being critical of the Company's policy in relation to maternity pay and Michelle Bennett "*agreed to set up a meeting with the managers to discuss*". It seems, in fact, to have been a meeting with Tom Delves, HR advisor [1190]. Michelle Bennett states that she then spoke to Remi Suzan and "*he said that Marta had asked to work from home as she had just got married, they also had a large four-bedroom house they had just purchased and can't afford the time off, but felt* (it) *was not the business position to support her personal financial position and maybe she should not have fallen pregnant*" [1190]. Michelle Bennett stated that she reported this to David Gratte.

50. The extract from the Statement of Michelle Bennett then states that an informal meeting took place with the Claimant on 20 November 2018. Michelle Bennett stated that the Claimant "*was extremely upset and hysterical, stating she was going to resign and take the company to Tribunal because she was being pressurised to do so and could not get a decision*" [1191]. Michelle Bennett states that the meeting was scheduled for 30 November 2018 to provide the Claimant with a decision.

51. Michelle Bennett then spoke to David Gratte again and suggests that he stated "*why should pregnant women get different treatment, he could not work at home for a year when his children were born*" [1191].

52. The Statement of Michelle Bennett then describes the Claimant attending a meeting on 30 November 2018 with Tom Delves, HR Business Partner, with Michelle Bennett not being able to chair the meeting due to booked leave so that she told Tom Delves to call her if needed. In fact, from the contemporaneous documentation, it seems likely that this was a meeting for which minutes exist dating the meeting to 23 November 2018 [654-655].

53. However, it will be seen from the minutes that Michelle Bennett is probably wrong when she states that the meeting was to give the Claimant a decision. Certainly, the minutes suggest that there seems to have been some misunderstanding as to the purpose of the meeting. The Claimant understood that the meeting was to follow up whether Michelle Bennett had spoken to Ian Gratte regarding the issue of maternity pay and to reach a decision on her request to work from home. During the meeting, Michelle Bennett was contacted on her mobile telephone and confirmed that the meeting was to discuss how the Claimant could utilise her maternity leave and holiday entitlement. Michelle Bennett suggested that she felt that the Company would be favourable to the Claimant's request to work from home but that the Claimant would need to request this after she had commenced maternity leave as this was "*a point of law*". The Claimant responded by stating that she was "*feeling extremely upset and frustrated with the way in which the Company was treating her*". She is recorded as having stated that she "*wondered if the best option was for her to quit as she felt insulted by how she is being treated*". She commented that she "*could not believe the Company would be so cruel to her*" and she "*feels the company are trying to get rid of her as ever since she told RS she was pregnant, things have been different*". She stated that "*she does not trust the Company and feels they are out to get her*". In the context of suggesting that she felt that "*the Company are trying to get rid of her*" she referred to having "*had comments made to her about reducing her hours if she works from home*". She also stated that she "*has had comments about not being able to look after her child if she works from home*". She referred to Remi Suzan having told her that "*they will allow me to work from home but reduce my hours*". She stated that "*she won't accept that and if they try, she will see them in a different room*" which seemed to have been referring to taking legal steps.

54. In her Statement of Evidence, the Claimant suggests that she should have been offered mental health support because it was obvious that she was distressed and that arrangements should have been made to investigate the concerns that she raised during the meeting, particularly as David Gratte was sent a copy of the minutes. Equally, it would have been open to the Claimant to have requested such support or to have raised any concerns as a complaint or grievance.

55. The Statement of Michelle Bennett states that she advised the Claimant to submit a flexible working request and "*put in writing what she wanted, dates and time*" [1192] As a result, she states that the Claimant made a flexible working request on 30 November 2018. It can be seen that the Claimant sent the flexible working request attached to an e-mail to Remi Suzan, with the subject of the e-mail being that of her request to work from home. Remi Suzan forwarded the e-mail to HR

and relevant managers, including Michelle Bennett. Michelle Bennett's reply stated "*I will have a chat with her about this as I made it very clear that she would need to have the baby first*". This would seem to be inconsistent with the extract from the Statement of Michelle Bennett which claims that she had, on the very same day (albeit, it seems possible that any conversation was, in fact, when she was called during the meeting on 23 November 2018) advised the Claimant to submit a written flexible working request.

56. It can be seen that, in places, the Statement of Michelle Bennett appears to be inconsistent with the contemporaneous documentation (in addition to the obvious point that it was clearly a self-serving statement in support of her own Claim, and in which she was seeking retrospectively to portray her communications with the Company regarding the Claimant situation as amounting to protected disclosures.

57. Remi Suzan replied to Michelle Bennett's suggestion that she would "*have a chat with her about this*" by requesting "*don't provoke her*" as "(w)*e had only calmed her down after your last arranged meeting with her last Friday*" (which would be a reference to the meeting on 23 November 2018). Michelle Bennett then replied stating that she would simply acknowledge the formal flexible working request and explain the process and next steps.

58. The Statement of Michelle Bennett then refers to a meeting taking place to discuss the Claimant's request in early December 2018 with Michelle Bennett, Remi Suzan, David Gratte, Glenn Sheldrake, Paul Stark, Tom Delves and Ian Thomson (the Managing Director of the Company) present. Michelle Bennett stated that, during the meeting, Remi Suzan stated that the Claimant "*was hounding him all of the time about working from home and he admitted that he had said that he had spoken to* (?) *stating this wasn't possible as it would rely on what type of baby she had, if she had a bad baby then she would not get the work done*". Michelle Bennett stated that Glenn Sheldrake had also stated that "*he had discussed reducing her hours to 25 hours per week*". Michelle Bennett further refers, in her statement, to "*comments were made about supporting her personal life and that she should not have got herself pregnant*" [1193].

59. According to the Statement of Michelle Bennett, the outcome of the meeting was that a flexible working request meeting was scheduled for 12 December 2018 but was then postponed until 21 December 2018. Again, this would appear to be inconsistent with the evidence of the Claimant which is that she only received a letter acknowledging the flexible working request on 20 December 2018 and was invited to a meeting on 11 January 2019 to discuss the request. By this point, the Company seems to have taken employment law advice and it had been decided to consider allowing a period of twelve months working from home.

60. The Claimant referred the Tribunal to extracts from a separate grievance investigation report [1195-1196] undertaken by an investigator (referred to as "JT") from third party consultants, Croner Face2Face ("Croner"), into complaints made by Michelle Bennett who made allegations of being subjected to bullying and discrimination. Michelle Bennett claimed that she challenged the position of the Company in relation to maternity leave and maternity pay and this had "*hastened her demise*" [1196]. She referred to her involvement in the Claimant's request to work from home. She stated that the Claimant had been "*told to reduce her hours*

and pay". When Michelle Bennett had challenged the senior team, it was alleged that David Gratte had stated "*well, if she can't afford a baby, she shouldn't have got pregnant*" [1195]. Michelle Bennett said that "several comments were made in meetings about how Marta would "*not know what having a baby is like until it arrives'*" [1195].

61. JT clearly interviewed a number of individuals to investigate the allegations being made by Michelle Bennett. The position of David Gratte had been that the Claimant had wanted to work from home as she could not afford a long period of time on statutory maternity pay [132]. There had been various conversations in relation to this between David Gratte, Michelle Bennett, and the Claimant's line manager. Michelle Bennett had suggested that the Company start paying enhanced maternity pay and put forward a business proposal based on paying 12 weeks' enhanced maternity pay. This was then implemented so that the Claimant was the first employee to receive this new enhanced maternity pay. David Gratte took issue with the suggestion that he said "*well if she can't afford a baby, she shouldn't have got pregnant*" but agreed that there had been a meeting in which the Claimant's financial situation had been discussed and he had said that "*they should have made sure they could financially afford a baby before becoming pregnant*". JT accepted that any comments made were as described by David Gratte but stated that such a comment had been "*inappropriate*" [132].

62. The report also refers to responses made by "*IT*" when interviewed (this appears to be a reference to the First Respondent's Managing Director, Iain Thomson). The report notes that IT disagreed with the suggestion of Michelle Bennett's that she had challenged the Company's position on maternity leave. IT stated that the Claimant had "*raised with them the need to consider reviewing maternity leave as part of the business benefits package*" and, as a result, "*the business agreed that she raised a valid point, and as a consequence they enhanced maternity provisions*". IT stated that the "*business were already fulfilling their statutory obligations in respect of maternity leave and pay*".

63. The conclusion of the report was that "*IT gave a credible account of the concerns raised by Marta, which was what prompted the business to consider reviewing their maternity policies, as opposed to MB's assertion that she was the one that challenge the company view*". There was no evidence that this "*hastened her demise*". Rather, the "*completely accepted that changes were required, and subsequently acted on this*". Moreover, there were "*no legal implications for MB to highlight, as statutory obligations were already being fulfilled*". [1196].

64. it is noteworthy that JT's report refers to Michelle Bennett's resignation letter to David Gratte which stated that she had had a "*really great experience with Gratte Brothers*" and "*I hope our friendship continues for many years to come*" [1195]. The report stated that "*JT does not find that it is possible that a resignation letter of this nature would be drafted by an experienced HR professional who considered that they had been bullied and discriminated against*" [1195].

65. Within the Employment Tribunal proceedings brought by Michelle Bennett, the Company relied upon a Statement of Evidence dated 23 September 2020, which was provided by the Claimant. The Statement of Evidence detailed the dealings which the Claimant had with Remi Suzan, Paul Starkey, Glenn Sheldrake, Tom

Delves and Michelle Bennett in relation to the issues of maternity leave, maternity pay and working from home, once she had told the Company that she was pregnant in 2018. She stated that throughout "*the whole process, my managers were always open to me working from home, as long as HR were happy, Remi Suzan would always tell me that he was there to support me*". The final paragraph of the Statement stated that when "*I returned from maternity leave I worked from home and continue to do so and I constantly feel like I'm supported by managers and if I didn't I would have left the Company by now*" [1018].

66. During her oral evidence to the Tribunal, the Claimant was cross-examined by Mr Husain about this Statement of Evidence from 2020. It was pointed out by Mr Husain that, whereas the Claimant's present case involved alleging that Remi Suzan had not been supportive at the time of her first pregnancy, the Statement of Evidence from 2020 gave the impression of Remi Suzan having been very supportive of the Claimant and rather, it was Michelle Bennett who had been unsupportive. Similarly, whereas the Claimant's Statement of Evidence within the present proceedings was to the effect that that Remi Suzan had suggested that the Company might have to reduce the Claimant's hours, her Statement of Evidence from 2020 was to the effect that it was Michelle Bennett who told her that the Company was looking to reduce her hours. When questioned by Mr Husain, the Claimant sought to deal with these apparent inconsistencies between the two Statements by explaining that she had not written the Statement of Evidence from 2020 and had only signed it. This appeared to be an unsatisfactory attempt to distance herself from a document which she had signed immediately above a statement to the effect that it was true to the best of her knowledge and belief. Mr Husain had to put to the Claimant that the Solicitors for the Company had e-mailed the draft Statement to the Claimant, and she had said that she was happy with it and then signed it, which the Claimant accepted. However, when Mr Husain returned to the issue by suggesting that paragraph 23 of the Claimant's present Statement in support of her Claim was inconsistent with paragraph 28 of her 2020 Statement, in that she had been suggesting in 2020 that "*I constantly feel like I'm supported by managers*", the Claimant then said that "I did not make those comments and the statement was written by solicitors and I made a mistake in signing it". Again, when it was pointed out that there was no reference to her alleged heavy workload, the Claimant's response was that "*I did not write it*". In her closing written submissions the Claimant went further and told the Tribunal that "*I signed it without reading it*" although she prefaced this by saying that "*I will not say that it was correct for me to do so*".

67. The Tribunal found it unlikely that the Claimant would have signed the Statement of Evidence from 2020 without reading it. Moreover, the rather cavalier position of the Claimant in relation to this Statement adversely impacted upon the Tribunal's view as to the Claimant's credibility and the reliability of her evidence. She was prepared to put a signature immediately beneath a statement to the effect that the contents of the Statement of Evidence were true, either without checking this to be the case, or despite the contents not being true (on her case and in so far she disavowed the contents of the Statement in the course of her evidence to the Tribunal). The Statement was both supportive of the Respondents within the Tribunal proceedings brought by Michelle Bennett as well as being to the effect that her employer (apart from Michelle Bennett) had been very supportive to her.

The Claimant's reasons for signing the Statement if she had not checked it and / or it was not completely true were not satisfactorily explained beyond the Claimant tacitly acknowledging that it was not correct for her to do so. Clearly, the Claimant must have thought that it was in her best interests to sign a Statement at the point in time when she did. If so, she demonstrated a willingness to put her best interests before the truth or the interests of justice.

68. It was also noteworthy, in terms of the reliability of the Claimant's evidence, that she could be evasive and unwilling to make obvious concessions if this did not suit her case. Mr Husain had pointed out to the Claimant that the Company had increased its maternity benefits so as to provide for twelve weeks' contractual pay. The Claimant accepted that the Company had changed its policy and that she was the first beneficiary. However, when Mr Husain put it to the Claimant that this was done with her in mind, her answer was that "*I cannot say*", despite it being obvious that this was the case.

69. In the meantime, on 19 November 2018, the Claimant states that she had made Paul Starkey aware that she was struggling with the long hours that she was working while pregnant and that she was suffering from severe backache. The contemporaneous documentation shows that, presumably as a result of the Claimant having raised matters, on the same day, Tom Delves of HR sought to make arrangements for a maternity risk assessment to be undertaken as the Claimant was approximately 20 weeks pregnant and no such maternity risk assessment had yet taken place. However, the specific issue mentioned in his e-mail making the arrangements for the risk assessment was not that the Claimant had raised the issue of workload but that she had mentioned that she was suffering from a sore back and her GP had recommended that she asked for a chair with back support [1023].

70. The risk assessment took place on 21 November 2018. The risk assessment did not record any issue about workload being raised by the Claimant. The questionnaire was completed to state that she was not working in conditions that could cause mental or physical burdens [1025]. The issue that was identified by the questionnaire with that of excessive travelling or commuting times with the comment section of the form recording that the Claimant had stated that her travel time from her home in Stansted to the office was 90 minutes each way. This is consistent with the Claimant's Statement of Evidence dated 23 September 2020 which does not mention any issues regarding workload during this pregnancy but does say that, later on in her pregnancy, the Claimant was struggling with the commuting each day and had a lot of pain in her back and later required physiotherapy when her abdominal muscle split [1018]. The issue regarding a need for a lumbar support / ergonomic chair at her workstation and the need to move every 20 to 30 minutes because the Claimant was suffering from back pain was also identified. The risk assessment also referred to the Claimant's physiotherapist having stated that she needed a lumbar support / ergonomic chair at her workstation to reduce the back pain from which she was currently suffering. The overall risk assessment was low. The completed risk assessment provided for a review to be undertaken no later than 21 December 2018. The Claimant makes the point that the Company did not comply with the deadline for reviewing it. It can be seen that the deadline was fairly close to Christmas. Ultimately, the risk

assessment was reviewed on 2 January 2019. This updated risk assessment recorded that the Claimant now had the requested lumbar support / ergonomic chair in place [1025). The Claimant states that no further risk assessments were undertaken. Her maternity leave then seems to have started on 22 March 2019.

71. In her Statement of Evidence, the Claimant states that, whilst heavily pregnant, she was made to work really long hours due to the workload and made specific reference to a document in support of this contention. The document itself is an e-mail from Dean Robson to the Claimant sent on 5 December 2019 with the heading "Conversation with Dean Robson" [1200]. It then sets out a series of exchanges between Dean Robson and the Claimant. Whilst it gives the time of the various communications, it does not give the date. Thus, at 08.15 Dean Robson had e-mailed the Claimant asking if she was getting someone else ("Matt") to pick up the points from his earlier e-mail. Dean Robson was suggesting that, if necessary, he could assist Matt in doing so. The Claimant replied at 08.59 saying that "*I did them myself yesterday*" and "*I finished working at 1am yesterday*". She states that "*I sent them my last update at 00.24 yesterday*". Whilst this would seem to show the Claimant working beyond midnight to get some work done, it also seemed to show that the expectation was that the work would be done by Matt, and not the Claimant, but the Claimant took it upon herself to get it done.

72. On 15 January 2019, Michelle Bennett wrote to the Claimant with the outcome of her flexible working request [657-658]. The request had been to work from home for a period of twelve months following her return from maternity leave. It was stated that the outcome of the meeting on 11 January 2019 had been to agree that the Claimant would work from home for four days per week from Tuesday to Friday. It was stated that the Claimant would have "*core hours of working which will be agreed at your return to work meeting following your maternity leave, these must be a min of 4 hours per day while working from home*". The Claimant would attend the office on each Monday for various meetings and / or training between 08.30 and 17.00. There would be no changes to the Claimant's contracted hours of work or her main terms and conditions. There would be no changes to her job title, role and responsibilities. She would need to notify HR four weeks prior to her intended return to work so that a home risk, and health and safety, assessment could be undertaken. At the conclusion of the twelve-month period, the Claimant would return to her normal working pattern.

73. On 16 January 2019, Tom Delves, HR Business Partner, wrote to the Claimant with a formal acknowledgement of her maternity leave and pay. This confirmed that she was eligible for 52 weeks of maternity leave which consisted of 26 weeks of ordinary maternity leave followed immediately by 26 weeks of additional maternity leave. She was entitled to receive 39 weeks maternity pay with the first 12 weeks being paid at her for normal pay and the remaining 27 weeks being paid at the standard maternity rate (which was then £145.18 per week). The earliest that she could commence her maternity leave was 6 January 2019, which was 11 weeks before her due date. In the event, it seems that the Claimant did not commence on maternity leave until 25 March 2019. The Claimant's absence on maternity leave seems to have resulted in no appraisal taking place for 2019 as recorded on the 2020 appraisal form [661].

74. The Claimant complains that, following her return from maternity leave, the Company failed to provide her with a designated place to express milk despite her requesting this on numerous occasions. However, she states that she was told that she could use someone's office when they were not around. Obviously, this would have been in relation to the one day a week that the Claimant was required to attend the office.

75. The Claimant also complains in her Statement of Evidence that, following her return to work, the Company failed to do a risk assessment despite knowing that she had just given birth less than six months ago and that she was breastfeeding her baby.

76. The Claimant was still working from home at the time of the completion of her next appraisal form for an appraisal which was due to take place on 9 March 2020 which was due to be conducted by Paul Starkey [661]. It is noteworthy that, in completing the section which asked as to what "*has helped you carry out your role*", the Claimant listed various factors including the "*support of my colleagues and bosses*" [662]. Indeed, it is noteworthy that in completing the appraisal form, the Claimant seems to have cut and pasted and / or repeated some of the information which was provided in the 2018 form. Thus, in listing what had helped her, the form has listed the "*support of my colleagues*" but the words "*and bosses*" have specifically, and seemingly consciously, been added to this part of the completed appraisal form. The section also included a question as to "*what has made it more difficult?*". The Claimant's answer referred to a "*lack of contribution to the work from the site team and the lack of support from the engineering team*". The Claimant listed her achievements as including showing "*that it is possible to manage a team working from home using all the right tools for it and working hard*" and "*meeting all the deadlines*". The only references to workload were on the basis that "*due to workload on current AutoCAD projects Marta has not had the chance to learn Revit*" which was "*currently being addressed*" and "*having the office at home has helped me to be able to work extra hours when needed*". There was no suggestion that the workload was excessive. The comments of Paul Starkey seem to accept that the Claimant's management of six to eight CAD Operators on the project in question had been excellent and all of the dates had been met.

77. Comments recorded at section 5 on the 2020 appraisal form were to the effect that, as the Claimant had been on maternity leave, attendance on training and CPD had not been possible [661]. In terms of the aims for the following twelve months, the Claimant's comments included "*able to spend some time learning Revit*" and being "*able to spend some time doing the essay for my CIBSE membership*". The comments added by Paul Starkey at section 5 of the form indicated that he agreed with these "*aim*s" which had been identified for the next twelve months. Comments to the same effect were made by both the Claimant and Paul Starkey at section 7 as to the "*sort of training/experience*" the employee would benefit from in the next twelve months.

78. Shortly after the 2020 appraisal, restrictions on attending the workplace were introduced, with effect from 16 March 2020, as a result of the pandemic. As such, the default position became that all employees were working from home for five days a week.

79. On 3 August 2020 the Claimant e-mailed management and HR with notification that she was pregnant. A formal letter of acknowledgement was sent by Aoife Moran, Human Resources Officer, on 3 September 2020, asking that the Claimant accepted congratulations on this wonderful news. It was confirmed that she was eligible for 52 weeks of maternity leave consisting of 26 weeks of ordinary maternity leave and 26 weeks of additional maternity leave. Based on an expected week of childbirth from 16 January 2021, the earliest date that she was able to commence her maternity leave was 25 October 2020. The Claimant was asked to confirm when she wanted to commence her maternity leave by 28 September 2020.

80. On 22 September 2020, the Claimant had made another flexible working application. A flexible working request meeting with the Claimant, Tom Delves and Paul Starkey took place on 21 October 2020. The extent to which there had been discussion regarding the Claimant's proposed childcare arrangements can be seen from an exchange of emails which took place between Tom Delves, Paul Starkey and Glen Sheldrake following the meeting. After Tom Delves had e-mailed a draft outcome letter to Glen Sheldrake and Paul Starkey, Glen Sheldrake replied on 23 October 2020 stating that they needed "*to confirm she will have child care to cover all hours that she is working*". He was wanting clarity as to whether her child carer would "*be taking other child to and from Nursery*" and stated that "*I assume the child carer will look after both children if the child returns from Nursery before the end of the working day*" [136]. Tom Delves replied on 26 October 2020 stating that "*I can put some wording in there that her hours remain 8:30 – 5 and she has confirmed her ability to meet these*". Given that this e-mail exchange was taking place shortly after the meeting, the Tribunal was satisfied that Tom Delves was in a position to remember what had been said and would not have stated this unless it was the position which had been communicated by the Claimant. Regarding Glen Sheldrake's query regarding the nursery position, the e-mail from Tom Delves stated that, *"while we didn't go into the specifics Marta has confirmed that child care arrangements are in place and will not affect her hours or ability to meet the requirements of her work*". Again, the Tribunal was satisfied that he would not have referred to the Claimant having confirmed this, had she not done so. He then made reference to most nurseries having "*early drop off/late pick ups to allow parents to meet their work hours*" and stated that "*I think it's best to take Marta at her word however if there are signs that work is not being done, we can investigate at that point*".

81. Thus, it can be seen that specific detail regarding the Claimant's childcare arrangements, in particular when she would be dropping off and picking up her eldest child at nursery, were not sought during this meeting from the Claimant. Tom Delves explained that this was because he did not want to antagonise the Claimant by asking for specific details. Moreover, he was content to proceed on the basis of the Claimant's assurance that she was able to meet the requirements in respect of her working hours being 8:30 am to 5.00 pm.

82. By letter dated 13 November 2020 [138], Tom Delves notified the Claimant of the outcome of the application which was that she would be allowed to work from home for four days per week and would attend the office on one day per week, which "*has provisionally been arranged for Monday but may be subject to change*". The Claimant's Statement of Evidence suggests that this outcome involved the

Company having "*rejected the core hours*" and states that the Company "*didn't provide any valid business reason for not granting the core hours and failed to make me aware about my right to appeal*". In fact, all the letter does is state that the Claimant's daily working hours would remain 8:30 am to 5.00 pm with an unpaid lunch break of one hour. It was noted that the Claimant had "*confirmed during the meeting that you have childcare arrangements in place during these hours*". The letter stated that these arrangements represented a temporary change to a working pattern for a period of twelve months and that all other terms and conditions of employment remained unchanged. The letter was otherwise silent as to any issue in respect of core hours. Tom Delves did conclude the letter by stating that if the Claimant had any "*questions on the information provided in this letter please contact me … to discuss them as soon as possible*".

83. The Tribunal accepted the case put forward in the Grounds of Resistance to the effect that the Company was "*unable to agree for the Claimant to have core hours as part of this arrangement … because at the time of the request the majority of the Respondent's employees were working from home on a full-time basis due to the various lockdowns and restrictions in place at the time*", so that, as a result, "*core hours would have presented difficulties and inefficiencies in communication and availability for meetings during a turbulent period*". The Claimant points out that she had been working to the previous flexible working arrangements, which included core hours, during the initial period of lockdown, without any issues regarding her performance. She also pointed out, in the meeting to consider her flexible working appeal on 30 March 2022, that the arrangements were only going to apply what she returned from maternity leave after the birth of her second child so that relying upon the pandemic as a reason for only agreeing to certain arrangements was misplaced. However, in fairness, the request was granted at the point in time when the Company was having to deal with restrictions on working which applied to the entire workforce.

84. In her Statement of Evidence, the Claimant complains that, again, she had to work long hours while heavily pregnant. She states that, after numerous complaints, she was told that the Company would pay her for the extra hours but that she had to finish all of the work. She complains that the Company refused to hire more people, blaming the pandemic, and told the Claimant that she was lucky that she still had a job. Although heavily redacted, payslips for October, November and December 2020 do seem to show the Claimant being paid for 60.13 hours, 38.50 hours and 30.00 hours overtime respectively.

85. The issue of working overtime was raised by the Claimant with Paul Starkey in her appraisal on 2 August 2021. In the discussion of the issue in the appraisal meeting, the Claimant was specifically referring to the period before she went on maternity leave [1074] when she referred to working a "*stupid amount of hours*". Paul Starkey's response was that "(y)*ou shouldn't be*" and "*you should say*". The Claimant suggested that "(w)*e didn't have anyone else in the company to work and we were in the middle of a pandemic so we needed to do it*" with Paul Starkey responding that this was absolutely "*rubbish*" and at "*no time has anyone come back to me and said we need more CAD guys*" to which the Claimant responded that this was because "*we were scared that we were going to be fired ourselves*". It was clear from the discussion that the issue had not been raised with Paul

Starkey at the time as the Claimant specifically said that "*I didn't tell you*" and was suggesting that he should have questioned it from seeing the amount of time for which the Claimant was logged in during the day, to which Paul Starkey made the point that that "*I don't check up on everyone*". His responses made it clear that he was not expecting the Claimant to do more than 40 hours a week. He stated that if "*you are doing more than forty hours a week*" without "*correct support from your engineer or your site team, then I need to get more staff*". He made it clear that the Claimant "*shouldn't be put in that position by site team*" and when the Claimant suggested that they had, he took issue and pointed out that "*I've given that team another five CAD guys*" and "*I was told … that'll be fine … we'll manage with that*" [1074].

86. Having made it clear that no one "*should be doing more than 40 years a week or 37 hours*", Paul Starkey stated that "*if your site team and management is asking you work more, then you need to come to me and say there is not enough people to do this job*" and can "*we ask for more people*", to which the Claimant replied "*I certainly will from now on*". Paul Starkey was effectively making it clear that the Claimant did not have to work excessive hours ("*don't work on them*") to which the Claimant retorted that "*I'm not like that*" and that is "*not my work ethic*".

87. The Claimant also complains, in her Statement of Evidence that risk assessments were not arranged during or after this pregnancy.

88. The Claimant's maternity leave commenced on 11 January 2021. She returned on 22 April 2021.

89. The Claimant's maternity leave seems to have delayed the process of undertaking an appraisal with her for 2021. However, an appraisal form seems to have been sent out and completed in early January 2021. The Claimant's appraisal form [1035-1041] noted that she had effectively not had an appraisal since 2018. She had not had an appraisal in 2019 due to being on maternity leave and although an appraisal form that been submitted to HR for 2020, no further action had been taken due to the pandemic. Thus, the focus of the part of the appraisal form which involved reviewing objectives set at the last appraisal was on the objectives from 2018. It was noted that one of the objectives from 2018 had been to learn the Revit software used in the design of buildings. The Claimant had not had the chance to learn Revit previously due to workload on projects using AutoCAD (which was another drafting and design application used by architects and engineers). It was stated that this objective was currently being addressed. Another objective set as part of the 2018 appraisal had been applying for associate level membership of CIBSE. This was stated to be ongoing.

90. In completing the form, the Claimant, again, seems to have cut and pasted and / or repeated wording which she had used on previous forms, such as referring to the "*support of my colleagues and bosses*" as having helped her [1036] and having "*the office at home has helped me to be able to work extra hours when needed*".

91. At section 5 of the appraisal form, which provided for the employee to note his or her most important aims and tasks for the next twelve months, the comments inserted by the Claimant were that her most important aims were to "*be given a bigger project again where I can learn more things*", to be "*able to spend some time*

learning Revit", and being "*able to spend some time doing the essay for my CIBSE membership*".

92. The comments added by Paul Starkey in relation to section 5 noted that "*varied exposure to different projects will increase your experience levels*". It was further noted that the Company proposed "*to draw all new* projects *in Revit where possible, thus you should be getting some exposure to this in the future*" and in relation to associate CIBSE membership, it was agreed that this was beneficial to career progression within the industry in that it showed that an individual had a benchmark level of competence and experience, but it was stated that "*whilst the company will support you where possible with your application, the forms and deliverables should be completed in your own time*".

93. At section 4 of the appraisal form, in relation to the aspects of the job which she enjoyed least, the Claimant's comments noted that it "*has been a challenging year for everyone*" and she further stated that everyone "*is aware that working as a CAD resources not ideal for me, but I feel that we all needed to contribute to do as much as we could to help the business keep going during this difficult times and hence I've done it happily and do my best as usual*". The comments added by Paul Starkey were that, unfortunately, "*the current workload has been affected by Covid 19*" but it "*is hoped that in the future you will be able to resume more of a Coordinating Engineer role rather than CAD resource*", but this was subject to the "*type of workload available*" and the "*type of project dictates the level of involvement required*". It was not being suggested that this was being caused by staff shortages. The issue was that the workload available had been impacted by the pandemic.

94. On 10 May 2021 the Claimant was involved in a car accident on her way to work and so was not able to attend work on her designated day to work in the office. Accordingly, it seems that the Claimant was asked to come in to work on a Wednesday instead and was able to make arrangements to do so [1061].

95. On 13 May 2021 Paul Starkey sent a group e-mail to everyone regarding phase 2 of the Company's Covid return to work plan. This e-mail and the subsequent correspondence were included as part of Paul Starkey's Statement of Evidence [PS9]. The e-mail attached an attendance rota which made arrangements for members of staff to attend the office on three out of five Wednesdays over the following five-week period on the basis that this would be "*used to stress test the building over the next few weeks*". The rota listed the Claimant as due to attend the office on the first three Wednesdays in June. The Claimant replied stating that "*unfortunately as I explained the other day I cannot attend the office on Wednesdays as this is the only day that my son doesn't attend nursery (as there were not more spaces available)*". Paul Starkey replied thanking the Claimant for the information and stating that neither "*Glenn nor I were aware of this situation*". He asked the Claimant to discuss the position with HR.

96. On 10 June 2021 the Claimant challenged Paul Starkey in an e-mail stating "*if you want to check on me, you can phone me directly, don't need to go through Paul* (Bowcock)" [145] which was referring to her husband who also worked for the Company.

97. On 17 June 2021, David Gratte sent an e-mail to all staff stating the Government was still advising individuals to work from home where possible [147]. The Claimant complains [C39] that, on the same day, despite this Government advice, Glenn Sheldrake requested that the Claimant attend the office on a Tuesday, not taking in consideration either her flexible working arrangements or her health (in that the Claimant states that she has asthma so that she "*was a vulnerable person to Covid*". It can be seen that the Claimant sent a long e-mail to Paul Starkey on 17 June 2021 complaining about this request but stating that she would nevertheless comply effectively under protest. The e-mail was copied to Glenn Sheldrake. Glenn Sheldrake replied more or less immediately stating that the Claimant's e-mail was incorrect. He stated that he had not insisted that the Claimant attending the office was compulsory "*but would appreciate if you could visit the office twice in the next few weeks on days to suit you*". He suggested that this was part of an initiative to get members of the department into the office on particular days and explained his reasons for this. However, he made it clear that this was not, in any way, compulsory "*so if your wish is not to come in then that will be respected*" [146]. There was no reference, up to this point in the e-mail exchange to the Claimant being particularly vulnerable to Covid-19.

98. The appraisals for the period from April 2020 to April 2021 were delayed as a result of the pandemic and the working at home arrangements put in place. On 10 June 2021 the Claimant e-mailed asking us to the estimated date of her appraisal [1052]. Paul Starkey replied by e-mailing the Claimant saying that he "*was hoping to do these face-to-face should be resolved when we adopt the homeworking policy and return to the office three days a week*" [1052]. The e-mail stated that he assumed that "you are still planning on going into the office on a Monday every week once we adopt the above". He added that if "*you want to do this via Skype meeting instead I'm happy to do that but personally I feel that face-to-face meetings are usually more productive*" [1052]. The Claimant does not seem to have e-mailed a reply to this e-mail. However, on 22 June 2021 the Claimant had a telephone conversation with Paul Starkey in which she told him that she wanted to do her appraisal online and reminded him that she was more vulnerable to Covid-19 because of her asthma and because she had only been vaccinated once.

99. An extract from the home working policy was to be found in the Bundle [213]. The policy stated that the Company was committed to promoting remote working arrangements with the aim of providing a better work life balance for employees. However, it was stated that any "*arrangements should be based on based on tasks to be performed by the employee which can be carried* out *to the same level of quality at home rather than the office*". It was stated that "*the Company will determine which roles are suitable for homeworking*". The definition of homeworking in the Policy was "*where employees perform some of their duties at home*". It was stated that the Company "*offers a "Hybrid" model of working with mixture of attendance at the contractual place of work and working from home*". In this regard, the split of days between home and work "*will be highly dependent* (on) *a number of factors and each request will need to be considered individually by the employee's Line Manager*". However, for "*office-based employees a default starting point will be 3 days per week in the office with 2 days working from home*". Paragraph 3.3 of the Policy established the principle that all "*employees should spend some time at the contractual place of work every week as this benefits both*

the employee and the Company with maintaining relationships, mental health issues and support" it was further stated that elements "*such as training new staff members and maintaining a company culture will benefit from physical presence*". It was stated that this version of the Policy "*will run as a pilot for a period of 12 months, after which a management review will take place*".

100. On 12 July 2021 Paul Starkey sent an e-mail to employees regarding arrangements for returning to office-based working from 19 July 2021 assuming that this was consistent with any government announcement [1050]. The e-mail attached a rota for the next six weeks. The e-mail made it clear that employees should confirm if they had a valid medical reason for not attending the office or were at a higher risk of infection as a result of not being double vaccinated. In her Statement of Evidence, the Claimant complains [C41] that although the e-mail stated that employees who had only been vaccinated once would be considered as vulnerable, they nevertheless "*ignored me*". The Claimant had replied on 13 July 2021 stating that she had only received her first vaccine on 6 July 2021 and did not have an appointment booked for the second vaccine which would depend upon the outcome of any monitoring for any reactions which she might have from the first vaccine [1048]. As such, she was unlikely to receive her second vaccine before the end of August 2021. In her e-mail, she queried the need for her to attend the office on Wednesday 25 August 2021. Paul Starkey replied promptly to this e-mail stating that the Claimant's entry on the rota for Wednesday, 25 August 2021 had been in error, and the entry would be moved to Monday, 23 August 2021 (which would have been the normal day of the week for the Claimant to be attending the office) [1047]. The Claimant forwarded this reply to Tom Delves [1047] asking for Paul Starkey and Glenn Sheldrake to be made aware of the terms and conditions of the contract (by which she meant that she regarded the flexible working arrangements under which she only attended the workplace on Mondays as having contractual effect). Her e-mail also referred to a meeting that she had had with Paul Starkey in which "*he admitted he cut contact with me deliberately for two months because in his words he thought I needed time to calm down*" [1047].

101. The Claimant's e-mail to Tom Delves had also referred to a meeting that she had had with Paul Starkey in which "he admitted he cut contact with me deliberately for two months because in his words he thought I needed time to calm down" [1047]. However, in her Statement of Evidence [C77], the Claimant complains that in the period between April 2021 and April 2022 she was subjected to excessive monitoring. Various e-mails have been put in evidence. The home working arrangements put in place as result of the pandemic involved employees needing to be logged on to Skype for the purposes of communication [452]. The Skype system would show the current status of an employee in terms of whether they were available, out of the office, inactive, in a meeting, off-line, or on a conference call, and suchlike [150]. When homeworking arrangements were in place, employees were expected to be logged on using Skype. On 22 July 2021 Glen Sheldrake e-mailed the Claimant asking is "*your PC ok, you seem to be logged* (off) *for a number of hours*" [694]. The Claimant replied with a very brief summary of what she had been doing, including "*feeding baby*" but essentially saying that she did not need to be logged on to her computer to be doing the tasks on which she was working. Paul Starkey did not find this entirely satisfactory as she "*should still be logged into Skype though*". Glenn Sheldrake replied stating that

was "*what I thought, nobody else logs out*" and then noted that the Claimant had "*logged back in since she e-mailed me but I noticed Paul is now logged out*" and commented that this looked suspicious [693]. The reference to "*Paul*" was a reference to the Claimant's husband, Paul Bowcock, who was an employee in the same department and who would also have been working from home at the time. This resulted in Paul Starkey suggesting sending an e-mail to everyone reminding them that they "*must be logged into Skype at all times except when out for site visits*" as otherwise "*it ruins communication options and means that we are unable to use instant messaging*" [693]. Glenn Sheldrake then replied stating that "*IT is going to check their PCs this afternoon to see what activity has happened*". He made the point that, from the description of the work given by the Claimant, it was difficult to see that she would not need to be using her PC.

102. On 26 July 2021, after the promotion of Remi Suzan, Paul Starkey was promoted to Mechanical Director of the department, with his former position as Manager apparently left unfilled.

103. The Claimant refers to having made numerous complaints about the difficulty that she was experiencing trying to breastfeed her baby under the flexible working arrangements which now did not include the previous arrangements in respect of core hours. This was an issue which the Claimant raised during with Paul Starkey during the appraisal meeting which took place on 2 August 2021. During the course of the subsequent discussion during the appraisal meeting (see below), Paul Starkey was to make it clear that the Company had no issue with the Claimant having breaks during working time in order to breastfeed her baby.

104. A meeting had taken place on 26 June 2021 to discuss possibly changing the Claimant's flexible working arrangements. On 30 July 2021, Tom Delves e-mailed the Claimant to confirm the discussions which had taken place and the outcome [699]. From the e-mail, it appears that the meeting was not being treated as an appeal but had been "*called as you had asked the Company to consider introducing 'core hours' into your flexible working pattern*". It was explained that, under such an arrangement, the Claimant would be obliged to be available at certain times each day, generally two hours in the morning and two hours in the afternoon and would then be free to make up the remaining hours during the day at times convenient to her. The decision had been made to decline the Claimant's request. The reason was stated to be primarily that, in the Claimant's role as a Coordinating Engineer, she was required to be available to assist and support the project team and also to work with the CAD team on project drawings and it was, therefore, an important element of her role to be available during working hours to assist with any problems or queries raised by either the project team or CAD Co-ordinators. Implementing the core hours proposal would have reduced the time that the Claimant was available during normal business hours. It was stated that this would have had a negative impact on this area of the Claimant's job. It was made clear that the Claimant had the right to raise a formal grievance if she was not happy with this decision. It was confirmed that the Claimant's existing flexible working arrangements would remain in place until 25 April 2022. It was made clear that, from time to time, where there were significant business reasons, the agreement of the Claimant might be sought for the Claimant to attend the office a day other than Monday.

105. On 26 July 2021, Paul Starkey e-mailed the Claimant regarding her outstanding appraisal. He stated that "*I thought you would get back to me on whether you had a preference for face-to-face or via Skype as per my earlier e-mail*" [PS13]. He would appear to have forgotten the telephone conversation which had taken place almost five weeks previously. The e-mail went on to state that as "*the office is open again are you available to have your appraisal on Monday 2nd August*" and indicated that "*I will provisionally book out an hour for 10:00 so we have something in the diary but may need to move it to suit our workload commitment on the day*". As this was a Monday, it was therefore a day when the Claimant was due to be in the office. The Claimant replied to this e-mail stating "*I did get back to you over the phone and told you I would prefer to do it on Skype, but of course I am available at 10am on the 2nd of August to do it in person*" [302].

106. In the course of the subsequent grievance investigation, Paul Starkey explained that he had proceeded on the basis that as the office had reopened and the Claimant was in work on a Monday, it made sense to do her appraisal in person.

107. In her grievance appeal letter the Claimant referred to the fact that a number of male colleagues had their appraisals online even though they were due to be attending the office on dates near the dates on which they had their appraisal meetings.

108. On 30 July 2021, the Claimant had conversations with Tom Delves by telephone and then by Skype in which he made it clear that she was unhappy about being requested to do her forthcoming appraisal in person rather than online. Tom Delves did offer to have a conversation with Paul Starkey and to ask him as to the reason for having the appraisal in person. Tom Delves did also suggest that if she was too anxious to do the appraisal, then she could always request that it be postponed. However, the Claimant's position was that she thought that it was better to get it out of the way as soon as possible, and she declined the offer of Tom Delves to have a word with Paul Starkey. Tom Delves advised the Claimant to prepare as much as she could for the appraisal "*and maybe say, diplomatically, that you are concerned that the relationship between him and you isn't positive*" [700].

109. The appraisal duly took place on 2 August 2021, in person, with Paul Starkey. The meeting lasted 140 minutes. The Claimant recorded the meeting. As such, there is a full transcript of the meeting. From the transcript, Paul Starkey was not made aware that the meeting was being recorded.

110. Just before the appraisal meeting, the Claimant had presented Paul Starkey with a copy of the appraisal form for the period April 2020 to April 2021 which she had now substantially amended in places [701-707]. Whereas the earlier version of the appraisal form referred to the Claimant saying that she had been helped by the "*support of my colleagues and bosses*", in the updated version, "*and bosses*" had now been omitted. In listing what had made her role more difficult, the Claimant now stated that "*I would have appreciated a bit more organisation from my boss, as well as a bit of support*". She added that "*everything seems to be a problem suddenly*". The comments added by Paul Starkey suggested that the issues that he was aware of were those of the Claimant's concerns over having somewhere private to breastfeed her baby in the office and that of being paid incorrectly [701].

It is to be noted that Paul Starkey's comments at section 3 now stated that "*Marta is currently being used as a CAD resource which due to pandemic has restricted her opportunities to lead projects which she finds more interesting and challenging*" [703]. The Claimant's comments at section 4 regarding working as a CAD resource because of "*these difficult times*" essentially remained the same, but now after the words "*hence I did the job happily and doing my best as usual*" the Claimant had added the words "*without any complaints or comments about my job role*" [703]. At section 5 of the form, in relation to her most important aims for the next twelve months, the Claimant had added the words "(b)*eing supported by my boss*" [703].

111. At section 9 of the updated appraisal form, which contained a box for any other points of discussion, and which the Claimant had left blank on the original appraisal form, she had now written nine additional paragraphs, most of which began with "*I would like to know*" and raised matters about which she was clearly aggrieved, such as the previous arrangements in respect of core hours not applying, the arrangements for expressing milk, and a belief that she was being constantly monitored and questioned and "*constantly asked where I am if I'm not on Skype all the time*" . She suggested that the various matters which she had outlined were causing her great distress so that she was now having to receive mental health support. Similar issues were to be raised during the appraisal meeting, which included the Claimant making it clear that she felt stressed.

112. In her Statement of Evidence [C38], the Claimant complains that her employer had become controlling and started micromanaging her. There was some discussion as to the Claimant's concerns regarding this in the appraisal meeting which took place later on 2 August 2021. Paul Starkey's position, as explained in the appraisal meeting, was that working from home was no different from working in the office in that if someone needed time away from work during the day, he did not have a problem with it, but simply expected to be told, as set out below [1074].

"*It's just kind much like you are in the office and you say to me, I've just got (to) be out for an hour. Yeah. What's wrong with that? Why is it any different when you're working at home? It's the same thing. Cause a lot of these discussions we're having about now is cause you can't actually see and talk to people. Whereas if you are walking out here you can you said look, I just got to pop out for an hour, there is something I need to deal with. I need to leave early. Wouldn't have a problem with it. It's exactly the same. You know what's problem with that?"*

"Someone said to me, look I'm not going to actually be logging in … because I want to do something. Fine thanks for letting me know. Yeah. Alright. And that's the difference. if you don't let me know then I question where you are".

113. During the appraisal meeting, the Claimant raised the issue regarding the change in respect of core hours. Paul Starkey made it clear that the position had already been explained in the meeting which had recently taken place regarding the issue of core hours. The issue was simply that "*we want people to be available 8:30 to 5*". It was a "*business decision*" that everyone "*needs to be available*" and not "*personal*" [1068]. The Claimant suggested that it was "*making the breastfeeding my son really difficult*" [1068]. Paul Starkey made it clear that there was no problem at all with the Claimant breastfeeding her son during working

hours and the Claimant had been told this. The Claimant's concern was regarding being chased by Paul Starkey or Glenn Sheldrake when she was not logged onto Skype. In the course of this discussion, Paul Starkey asked "*how long does it take to breastfeed a child*", with the Claimant suggesting that it could sometimes take up to an hour and a half. This was in the context of Paul Starkey making it clear that during the time when the Claimant needed to be breastfeeding, she did not have to be available on Skype. This was something of a circular discussion with the Claimant insisting that "*you do have a problem with me breastfeeding my kids during work time*" and not being prepared to accept Paul Starkey insisting that there was no problem and it was simply a question of making sure that the Claimant's Skype status communicated that she was unavailable or busy.

114. During the appraisal meeting, it was not suggested by the Claimant that Paul Starkey asking the Claimant about breastfeeding, in the way set out above, had been objectionable. It was in the context of an issue which has very much being driven by the Claimant during the appraisal meeting, namely her suggestion that she was not being allowed to breastfeed during the working day. However, when interviewed as part of her subsequent grievance, the Claimant referred to having been "*asked very personal questions*" like how "*long will you express milk for*" and can "*explain to me how the breastfeeding works?*". When asked, as part of the grievance investigation, do "*you recall commenting or asking any questions in relation to her breastfeeding*", the answer given by Paul Starkey suggested that he didn't and that he stated "*I might have occasionally called her asking her where are you when we are working remotely it is difficult to* (see) *what people are doing*" [225].

115. At times, the discussion between the Claimant and Paul Starkey in the appraisal meeting essentially degenerated into a non-productive argument. A typical example can be seen from the exchanges [1061] regarding the rota with the Claimant suggesting that Paul Starkey was "*making things up*". This included the Claimant being sarcastic when Paul Starkey suggested that everyone was "*trying to keep you on Monday*" [1061] but an error had been made when the rota had been sent out with the Claimant attending the office on Wednesday ("*Must have been a genuine error. But trust me … Trust me my head thought like, oh blimey. What a nice mistake*") [1062].

116. It is clear from a number of the exchanges in the transcript of the meeting that the working relationship between the Claimant and Paul Starkey was at, or very close to, breaking point, with the Claimant's viewpoint being that Paul Starkey was "*making my life hell for no reason*", as appears from the exchange below.

"*Paul Starkey: I don't understand why you're upset with me. Cause i don't. Marta Sabio: <crying> because you are stitching me in the back constantly making my life hell for no reason. Dunno what I've done to you.*

Paul Starkey: I'm not stitching you on the back at all.

Marta Sabio: what have I done to you for you to treat me like this?

Paul Starkey: nothing, nothing, nothing at all".

117. The Claimant also raised wanting to work from home permanently and referred to previous discussions which had taken place between Paul Starkey and the Claimant regarding the possibility of her working from home permanently. The context provided by the Claimant in the appraisal meeting [1072] was that, at the time of a previous appraisal, when the Claimant had raised the possibility of permanently working from home, Paul Starkey had suggested that he was supportive, but there might be problems with Glenn Sheldrake if it was raised formally, with the Claimant then complaining that the position of Paul Starkey seemed to have changed and she referred to Paul Starkey having "*said to me, Marta, you are aware that if you apply for this to work permanently from home like that in this basis you might not even get a promotion*" When asked during the appraisal meeting if he remembered this discussion, Paul Starkey did not seem to deny suggesting that working from home might harm the Claimant's promotion prospects but made it clear that it "*depends what you can apply to the job*" [1072].

118. In her Statement of Evidence, the Claimant suggests that this involved treating her differently from colleagues, in that both Paul Starkey and Warren Mullem had been promoted in July 2021, after over a year of working from home. However, the circumstances involved in employees working at home in 2020 and 2021 because of the pandemic would appear to be rather different from the circumstances of an employee working at home permanently.

119. The Claimant raised an issue in the appraisal meeting regarding Paul Starkey having made a comment to her husband to the effect that he was getting a bonus twice, which she stated "*really undermine*(s) *me as my bonus is mine, not my husband's*" [1076]. Paul Starkey was then recorded as having explained the context of the conversation which had taken place in the terms set out below.

"*Okay, so do you know what Paul said to me? Paul said to me, why have the people on furlough have got bonus? Yeah, because they're part of this company because they've had to take a cut and salary and at the end of the day they've got no fucking job. They're sitting on their own worried about their jobs for the future. And the company, because they're still members of staff, has given them a bonus because they're earning fuck all*" [1076].

Yeah. But the comment was, if you get it, yeah. Oh, all the people have received furlough. That's about unfair. We've worked really hard. And I went Well, as a household, as a household, you have received a bonus twice. What's wrong with that statement? Just in general conversation or are you saying that I shouldn't be talking to Paul" [1077].

120. The exchange continued as set out below [1077].

"*Marta Sabio: No, you can't do what you want Paul. I will. I will just*

Paul Starkey: Right.

Marta Sabio: leave. I will leave seriously because I can see that this is a problem. I can see you've got a real problem with me. I dunno which one it is. so don't worry,

I'm, I'm actually actively looking for a job. As soon as it turns up I will leave and I that will sort out your issues and you can do what you want.

Paul Starkey: You told me last time that you were looking, trying to get a job here in another department.

Marta Sabio: I did, but doesn't come up. So I need to leave because I can't handle this ….

Paul Starkey: That's your choice Marta. No one is forcing you in that position.

Marta Sabio: a little bit

Paul Starkey: No, that's your interpretation of it, I certainly not what I'm trying to do".

121. It is to be noted that, when Paul Starkey seemed to become concerned, in the course of the meeting, that the personal conversations that he had had with the Claimant's husband were being reported back to her, the position of the Claimant became that of seeking to assert that she had overheard the conversation has to receiving a bonus twice because she sat close to her husband as set out below [1077].

"*Paul Starkey: They're just me and Paul talking for knowing each other 20 years.*

Marta Sabio: But how do you think that I feel.

Paul Starkey: But why is he? Why?

Marta Sabio: Because I am hearing because he sits close to me. Do you think? Cannot hear his conversations Paul. He's working close to me.

Paul Starkey: So you heard me say to him then. Yeah. Yeah. Surely that everyone else has been furlough has been paid bonus and the reason why.

Marta Sabio: Yeah. And I didn't hear you saying your household. I heard you saying,

Paul Starkey: well I'm sorry you're wrong.

Marta Sabio: I heard you saying you've got the bonus twice and said Not really. My bonus is mine.

Paul Starkey: Well no one's saying your bonus isn't yours. It's in your salary package.

Marta Sabio: Exactly".

122. During the appraisal meeting, the Claimant suggested that "*a lot of my colleagues have lately expressed the desire to leave the company in quite a few of*

them have presented their resignation". She suggested that "*there is a general unhappiness in the department because I think majority of people is not happy right now in the department with the level of management that we are getting*" [1078]. She wanted to know what was being done about improving the situation within the department. In answering this Paul Starkey referred to a recent occasion when "*we took David Hines out for a drink*" and "I asked them all about where are we with the department then, everyone said it was far better".

123. This prompted the Claimant to ask Paul Starkey, "*why did you take the guys out for a drink and you didn't invite me?*" Paul Starkey replied as below.

"*It was just a case of whoever is in the office on the day, if you want to come along, if you don't want to come along, I don't care. I'm taking Dave Hines out for a drink because he's been in furlough for the last year and he is having a difficult time*" [1078].

124. This explanation then prompted the Claimant to ask "*do you think that this is fair*" and "*am I having a difficult time and are you taking me out for a drink?*". Paul Starkey offered to do so but made the point that the Claimant was "*now saying that it's unfair to take a guy who's been in furlough out for a drink*". There was then a fairly long argument within the appraisal meeting over whether this amounted to "*department drinks*" as the Claimant suggested, to which she was saying she should have been invited [1078-1079], with Paul Starkey providing the further explanation set out below.

"*It wasn't a department drinks, it was a couple of close mates going out for ones. Simple as Yeah, right. Glenn organized it. Right. He asked me to change my day to come in. He asked Neil. Yeah right. He asked Aaron and he asked Laurence. Right. And that was here. And then Bhupinder come along for one and Matt come along for one yeah and you're making a big deal out of nothing*" [1079].

125. In relation to the issue of training, Paul Starkey had asked the Claimant as to the training or CPD undertaken between April 2020 in January 2021 with a transcript recording the Claimant's reply as "*I haven't*" and "*I've been working on*" (without the answer expanding further) [1058]. When asked as to this, the Claimant replied that "*I haven't even had the time to do the Revit training*". In replying, Paul Starkey accepted that "*no way you are going to be able to learn Revit without us giving you the time to do that*".

126. However, the position was different in respect of the Claimant doing her essay for CIBSE membership. The Claimant made it plain that she had not had the time to progress this and was unlikely to find the time to do so, if she had not been able to find the time to learn Revit [1065]. Paul Starkey made it clear that it was "*unless we were totally out of work, you're never going to get the time*". He volunteered the fact that "*Paul and I did it years ago when we had no work whatsoever … but we're not like that at the moment*" so "*I'm not sure you'll ever get to do it on company time*". He did stress the Claimant would "*get supported where you need it, you won't get the time to do it*". He explained that the company "*will support you … we are giving you some time, but we can't give you ages to write all your* (i)*deal CV and everything else that comes out of it in your*

competencies". He also claimed that the position was the same "*with Lawrence*" who "*doesn't do all his university work during workouts*", although the Claimant's reply suggested that she disagreed with this [.1065].

127. The appraisal meeting ended with a discussion about submitting the completed appraisal form to HR and the extent to which the additional issues which had been raised by the Claimant should be included.

128. The appraisal form was subsequently amended after the meeting to leave out some of the additional matters which the Claimant had raised at section 9 of the updated appraisal form. This would seem to have been as a result of a discussion which had taken place at the end of the appraisal meeting. Paul Starkey had been going through, with the Claimant, the various matters added at section 9 of the form [1079]. He seems to have been stating that he was not going to add anything to the form by way of his comments regarding these matters as they were "*discussion points*" and if the Claimant wanted him to give her a "*chapter and verse answer, then I need some time to do so*". However, he stated that "*I'm more than happy to put them into HR as they are*". However, the Claimant started saying that he should "*take the things from Paul out" (referring to her husband) "because if you are going to retaliate against him because of what I've said it's not fair*". Paul Starkey made it clear "*I've told you I'm not going to retaliate against anyone*" but "*when I talk to Paul on a personal level … I know there's … a difficulty in distinguishing what might be management, what might* (be) *personal*" and added that the point was that "*I don't expect it to be this thrown in my face*". The Claimant replied stating that if "*I am listening the conversation and he doesn't know that I have put that in there … he's going to probably* (be) *angry* … (so) *take it off this*". She then went through the form with Paul Starkey, identifying a number of other comments from section 9 of the appraisal form that she did not want included [1080].

129. Paul Starkey was clearly sufficiently concerned to send a detailed e-mail [723-725] to Tom Delves (copied to Glenn Sheldrake) at 16,36 pm. Although he suggested that generally "*the appraisal went well*" (which is somewhat at odds with the transcript), he felt the need to bring to the attention of Tom Delves various matters arising as a result of the appraisal, in particular the series of issues raised by the Claimant at section 9 of the appraisal form. He cut-and-paste into his email a number of the sub-paragraphs which the Claimant had added at section 9 of the appraisal form. This included some of the sub-paragraphs which she had asked to be left out of the appraisal form (and were subsequently omitted). From the sub-paragraphs cut and pasted into Paul Starkey's e-mail, it can be seen that the Claimant had originally updated the appraisal form to raise issues in respect of (1) a number of her colleagues having left the company because of "*general disappointment within the department*", (2) not being invited to the department's last social drinks, (3) her husband and herself being treated as one employee, and (4) comments made to her husband about receiving a bonus twice

130. The penultimate paragraph of Paul Starkey's e-mail to Tom Delves was in the terms set out below [725].

"*Comments on the above appreciated, Glenn and I have concerns regarding some of these comments and considering that she came into the appraisal with a file of*

historical e-mails is there a possibility she is building up a case for a claim and should some of the Item 9 points be addressed by HR?"

131. The Claimant would have received the completed appraisal form after the meeting. She makes the point that some of the comments made by Paul Starkey on the completed appraisal form differed from those which he had originally put on the appraisal form when it was first drafted before her maternity leave. On the original completed appraisal form, where the Claimant had suggested that her most important achievement in her role over the past twelve months had been proving "*that it is possible to work from home using all the right tools for it and working hard*", Paul Starkey had commented "*Marta's work ethic when working from home is unquestionable, she adopts a can-do attitude which is frustrated by lack of support from in-house teams when she is awaiting answers*" [1036], whereas the comment which now appeared in this box was "*Marta has been doing a CAD services coordinating role and producing cut sheets at 21 Moorfields which has required attendance at Skype meetings to identify issues that require to be solved*" [702].

132. On 3 August 2021, Tom Delves replied to Paul Starkey suggesting that some of the issues highlighted as having been raised by the Claimant in the updated appraisal form had already been raised by the Claimant informally, some of them had been "*bottomed out informally*", such as that in relation to core hours, but that "*I think we need to do something formally to resolve these points as they will just keep coming back*". He suggested "*going back to Marta and say you've reviewed her points of discussion and are concerned that they constitute a formal grievance and as per the grievance policy, you will forward the comments to HR to action*" and "*HR can then arrange a meeting to look into the points and formally resolve them*" [723].

133. One of the issues which had been raised by the Claimant was that of wanting to know when she was going to have a designated area to express her milk in the office. She stated that she was having to ask people to allow her to use their offices and that there was a lack of privacy because the office doors had windows. Tom Delves suggested that the solution would be to allow the Claimant to use the HR Meeting room as the Claimant attended the office on a Monday and it "*is highly unlikely the room will be used that day*" [1081].

134. In the appraisal meeting, the Claimant had been asked by Paul Starkey to let him know when she needed to do the (nursery) school run. Consequently, on 3 August 2021, the Claimant told Paul Starkey when she was leaving to do her school run. This resulted in Paul Starkey e-mailing the Claimant [155] referring to "*our conversations this morning*" from which Paul Starkey understood that the Claimant was looking to be taking her child to nursery at 9 am and collecting him at 3.30 pm as well as then looking after him from 4.00 pm on the days that the child was in nursery and was proposing to make up the time spent on nursery trips during the working day by only taking 20 minutes for lunch. The e-mail also set out Paul Starkey's current understanding, which was potentially relevant to these arrangements, which was that the Claimant did not have nursery provision for her child on Wednesdays in that "*I think currently you are awaiting a nursery place for Wednesdays could you advise what childcare is currently in place until a place at*

nursery becomes available". In her letter of appeal against the grievance decision the Claimant suggests that she was, in fact, only seeking to do the school run as the person who usually did it was unwell. If so, this would appear to be different from the position in May 2021 when the Claimant had stated that she could not attend the office on Wednesdays in June as this was the day when she had been unable to get a nursery place for her son [PS9]. In her evidence to the Tribunal the Claimant accepted that she would sometimes take and collect her child from nursery but suggested that it was only a journey of seven minutes.

135. In her Statement of Evidence, the Claimant complains about the e-mail from Paul Starkey on the basis that Paul Starkey would have already been aware of her childcare arrangements going back to 2019 as well as from the discussion which had taken place during the appraisal meeting [C50]. The criticism seems unfair in that the context of the e-mail was that of seeking to confirm the time off which the Claimant was asking to have during working day and the reason for it.

136. Paul Starkey was interviewed about this issue as part of the grievance appeal investigation [443]. He explained what had happened in the terms set out below.

"*Okay, so, this was the day after her appraisal where I said to her that, you know, if everyone's a bit more open and honest with some transparency then it's a lot easier to identify what people are doing, you know? So, she sent me a text message saying good morning, Paul, just to let you know I'm going to take* (her son) *to nursery, regards. So, I put okay, thanks for letting me know, can you make sure you put it on your Skype so that people who are trying to contact you while you're out know that you're not available? And I put thanks for letting me know your plans, I assume this is a one-off event because your childcare is not available today? To which she replied, Paul, this is not a one-off event, my childcare is in place, if you read the message I have taken my son to nursery, that is childcare, unfortunately with two years old he needs someone to take him there and pick him up from there, as you can imagine. But I'm under the impression that the terms of her working from home agreement was for breastfeeding and she had childcare in place already, so, I went to speak to Tom Delves about this, and we had a joint phone call with Tom. Marta wrote this e-mail on the 3rd of August …. Then I just replied, because obviously if we know from an open and honest transparency thing, if people have got childcare issues and they need to take their son to school on a day, then people let me know and I just say, great, thanks for letting me know, if you're out 15 minutes can you make it up during the day? And I'll give you examples of that later on. So, my reply to Marta was so that we are all clear and fully understand your childcare requirements, please could you list what days and times you're planning on taking your child to nursey? Which is a fair question when we're trying to run a business*".

137. During the appraisal meeting the Claimant made it clear that she had been unhappy about being asked to come into work on a Wednesday on two previous occasions, with the reason being that she did not have nursery provision for her son on Wednesdays. The position of Paul Starkey in the appraisal meeting seems to have been that "*at the end of the day, as we've said, if the company has asked*

you to come in, then you've got (to) *try and make us some arrangements to do it*" [1061]. However, contrary to the criticism made by the Claimant, the e-mail sent on 3 August 2021 did suggest a willingness to take the Claimant circumstances into account. In this regard, it made sense to confirm the Claimant's circumstances, rather than make assumptions or rely upon previous knowledge.

138. On 20 August 2021, Paul Starkey e-mailed the Claimant [1089-1090] with regard to the staff rota for the week commencing 30 August 2021. He stated that, considering "*that the 30th August is a bank holiday, would you be able to come in to the office on any other day that week?*" The Tribunal notes that this would seem to be inconsistent with the answer given by Paul Starkey when interviewed as part of the grievance investigation, when he told Angela Foster that "*I never ask her to come in when a Monday falls on a Bank Holiday*" [309].

139. The Claimant e-mailed Tom Delves on 23 August 2021 complaining that this request to attend work on a different day was inconsistent with Tom Delves having previously advised that the Company would ask the Claimant's agreement to attend the office on a different day than Monday where there were "*significant business reasons*" and that any such request would be "*made with as much time as possible for you to consider and make any arrangements*" [1089]. The Claimant suggested that "*I find really intimidating all of this situation*". She stated that "*I am going to try to make arrangements to try and find a day that I can attend next week as I am sure if I dare to say no there will be retaliation against me*". She was e-mailing Tom Delves as "*I just wanted to make you aware that the coercive control it is still happening*". Given the email had been couched in the form of a request rather than a requirement, this description on the part of the Claimant, referring to "*coercive control*", gives an indication as to the way in which she was interpreting actions on the part of her managers, even by August 2021.

140. Tom Delves replied stating that the fact that a Monday was a bank holiday was not, in itself, a reason for the Claimant to change the day in the office, so the Claimant did not need to agree to change a day if she did not wish to do so, and he would let Paul Starkey and Glenn Sheldrake know this. He ended the e-mail by asking if the Claimant would "*like me to consider your comments about how you have been treated as part of the grievance procedure***".** The Claimant did not pursue a grievance at this stage.

141. As part of her grievance appeal, the Claimant pointed out that Warren Mullem also had home working arrangements and made reference to his grievance investigation interview when he was asked by Angela Foster as to whether he would be asked to come in on another day if he did not go in on one of the days when he was due to be in the office. His answer was "(n)*ot realy, as I haven't booked holidays on the days I'm in the office*". He did say that if "*I was asked I would try to come in, but if I couldn't then I wouldn't*". In any event, his home working arrangements were rather different in that they involved attending the office three days a week, so that he was in the office rather more frequently than the Claimant.

142. On 18 October 2021, the Claimant e-mailed Paul Starkey stating that she would not be coming into work on that day as she was not feeling well. Paul Starkey replied noting that she was now in the last week of her Revit training and

was moving onto a new project (Project Alliance) on the following Monday. He stated that he had been hoping to do a review of her Revit training on that day which he would now move back. He asked if "*you want to come in another day this week to review the training and progress or are you up to speed with working on a live project from next Monday*" [742]. On 20 October 2021, the Claimant was signed off work by her GP for two weeks with the reason given as anxiety disorder.

143. Paul Starkey e-mailed the Claimant on 4 November 2021 in suitably friendly terms. He noted that he thought that the Claimant had one more week of Revit training to complete and asked if the Claimant thought that she would be ready to start on the Revit work on Project Alliance from 15 November 2021 [1213]. The Claimant replied stating "*I'm hoping that I will be ready in one week, so yes I should be able to start on the 15th, I would say that I will be using Revit officially for the first time then and I will beg for some understanding and* (patience)" [1213].

144. On 21 November 2021, Paul Starkey e-mailed various members of the department including the Claimant, attaching a schedule of booked holiday dates to be checked [971]. It is to be noted that the e-mail was not sent to Aaron Burton who was recorded on the rota dated 30 August 2021 as due to leave the Company on 17 September 2021 [1087]. The Claimant replied to the e-mail seeking to book a further five separate days of annual leave on dates between 25 November and 17 December 2021. She referred to her allowance as being that of 31 days annual leave plus five days carried over from the previous year. She ended the e-mail by stating that the "*above plus 2.5 days to carry over to next year will make the total of my allowance for this year*". In other words, was asserting that she had a total of 38.5 days of leave to take in the current annual leave year which included five days carried over from the previous year, and having booked leave in respect of 36 days, she was seeking to carry over 2.5 days into the next year [971].. Paul Starkey replied simply approving the additional five annual leave dates which the Claimant had requested [969-970]. The Claimant replied, thanking Paul Starkey, and copied her reply to HR, with HR being asked to confirm that she had 2.5 days left of her allowance to carry over into the next year [969]. She sent a further e-mail on 30 November 2021 chasing a reply [967-968] which prompted Paul Starkey to e-mail Oliver Dawson, copied to the Claimant, asking him to confirm that the Claimant had 2.5 days to carry over into the next year [967]. Oliver Dawson replied stating that if "*you carried over five days from 2020, then you will be able to carry over 2.5 days to 2022*" [966]. On the face of it, this would seem to show that the Claimant had all been able to carry over five days of unused annual leave from 2020 to 2021 and was then able to carry over 2.5 days of unused annual leave for 2021 into 2022.

145. It seems that at an earlier point in time, according to evidence given by Paul Starkey in cross examination, employees could carry over a small amount of annual leave into January. Separate and more generous arrangements had then been put in place as a result of the pandemic.

146. By December 2021, the Claimant's mental health had deteriorated. This was described in the later occupational health report of 17 March 2022 as set out below.

"*Marta reports ongoing work related stress which has affected her mental health. Her mental health reached its nadir in December 2021. At this point she reports*

very low mood with disturbed sleep and correspondingly extremely low energy levels. Her appetite was affected and her concentration deteriorated. She found it much harder to focus and became more distracted by worries and automatic negative thoughts. She began procrastinating and her decision making ability deteriorated. Her motivation reduced and her self care deteriorated. She was unable to enjoy any aspect of her life and her confidence reduced. Her level of irritability increased and she reports feeling hopeless and that her situation would not improve. As a mood deteriorated, her anxiety escalated and she found herself suffering with generalised anxiety and weekly panic attacks alongside becoming more tearful" [218].

147. On 4 January 2022, the Claimant e-mailed Paul Starkey and Tom Delves with another flexible working request, this time asking for permanent flexible working arrangements to be put in place so that her working arrangements would permanently involve working in the office on Mondays and the rest of the week at home. The Claimant's Statement of Evidence [C54] suggests that her employer was not happy about it. Certainly, when Paul Starkey forwarded the e-mail to Glenn Sheldrake, he prefaced his e-mail with the words "(a)*nd so it begins!*" This was effectively a comment on the situation which betrayed a degree of exasperation.

148. On 5 January 2022, the Claimant e-mailed Glenn Sheldrake asking if he had "*managed to sort out the room to express my milk in the office*" [753]. She was effectively referring to having recently told Glenn Sheldrake that she had been told, on more than one occasion, that she could not use the HR meeting room "*because they were going to hold a meeting*". She attached a screen shot suggesting that it was a legal requirement for there to be suitable facilities for breastfeeding mothers. The screenshot referred to the Health & Safety Executive recommending that it was good practice for employers to provide a private, healthy and safe environment for breastfeeding mothers to express and store milk, with it been stated that toilets were not a suitable place to express breast milk. The e-mail made it clear that the Claimant did not regard the meeting room that she had been told that she could use as sufficiently private. She described it as containing windows on three of the four walls and a door with a window in it, with no curtains over that window. She attached a photograph of the room which certainly shows a door with a panel of glass although there were blinds covering the other windows shown in the photograph. Glenn Sheldrake forwarded the e-mail to Paul Starkey, David Gratte, Tom Delves and Oliver Dawson. He referred to having had no reply following the matter having been discussed a couple of times before Christmas and asked for a solution to be found so that he could reply to the Claimant.

149. The Tribunal accepted the evidence of Tom Delves [TD16] that the concerns being raised by the Claimant were addressed, in particular by making sure that the room was booked out solely for her use when she was attending the office. Additionally, the panel in the window was covered up and the facilities team instructed the Company's contract cleaners to ensure that the room was cleaned at the end of every day.

150. On 21 January 2022, the Claimant e-mailed Paul Starkey [162] regarding her "*Work Load*". She was enquiring as to "*the Company's plans for me this year*" and then asked "*how long am I going to be doing Coordination?*" She further asked

"*when am I going to get another job as a Coordinator Engineer?*" Although, the e-mail was polite enough, the sub-text was clearly that the Claimant did not think that the work she was doing was consistent with her job as a Coordinating Engineer.

151. Paul Starkey clearly understood the sub-text and forwarded the e-mail to Glenn Sheldrake [161] saying that he was not "*quite sure what she means… by* (how) *long she will be doing coordination*". He stated that "*I suspect she thinks coordinator engineers don't do coordination drawings and she just wants to do management" and will correct her*". He stated that "*I will explain to her that* (as) *far as leading a project it's down to what workload we have available and how it is best resourced*" and "*I'm tempted to reply that she is already doing the job of coordination engineer as per her job description*". He requested any "*comments before I suspect more confrontation*".

152. Paul Starkey subsequently sent an e-mail to the Claimant which stated that "*I'm not sure what the confusion is you are employed as a Coordinating Engineer whose main role is to produce coordinated drawings*" [759]. In other words, the Claimant was doing the job which she should have been doing. The Claimant replied on the same day, in an e-mail to Paul Starkey and Glenn Sheldrake, asking to be shown where it said this in her job description [759]. She stated that "*as you are all aware, this constant unfair treatment for the past months have even* (led) *the into having mental* (health) *issues*". The tone of the e-mail was disrespectful. She stated that "*I am not willing to keep sending e-mails trying to get some clarification and get back this sort of overbearing answers*". She ended by stating "*I really cannot understand why am no longer allowed to do my job so I would appreciate any answers*". Paul Starkey's response was that "(w)*e are a coordinating department - we produce coordinated drawings and this is clear in your job description*". The Claimant accepted that this was in her job description but her complaint was that she was being utilised as a CAD Coordinator since her return from maternity leave. She copied HR into the exchange of e-mails which resulted in Tom Delves e-mailing Glenn Sheldrake and Paul Starkey saying that "*I'm not quite sure what Marta's issue is here but I don't think that it warrants being raised HR as it seems something that can easily be resolved within the department*" [756]. However, he made it plain that he would let the Claimant know that she could raise it formally if she wished. Glenn Sheldrake replied to Tom Delves stating "*I agree we will deal with the role, but we need HR to review the overall situation with regards to Marta's attitude, statements on mental health, which she is now blaming on the GBTS management, and her sickness*" [756].

153. On 31 January 2022, the Claimant had a meeting with Glenn Sheldrake. She was clearly unhappy about the meeting being arranged so late in the day as she describes in a later e-mail of 14 February 2022 [338]. Glenn Sheldrake described the meeting in the course of the grievance investigation, when asked by Angela Foster about an occasion when the Claimant had said to him that "*the way you talk to her is affecting her mental health but you don't care*" [223]. Glenn Sheldrake remembered the conversation and stated that "*this is when she came to my office shouting*". The Claimant herself referred to the meeting in her e-mail dated 14 February 2022 [338]. She stated that during the meeting she had asked Glenn Sheldrake "*why am not allowed to do my job anymore, and your answer was kept as 'I don't know what you mean' and 'you are doing your job'*". She also stated

that the meeting was when "*I made you aware (once again) of all the mental health issues that I'm happening to have due to your behaviour and P. Starkey's towards me, and I told you I cannot handle the situation any longer and I would really appreciate it if you stop it as I've been in therapy for over a year and I really need to stop*" [338]. She referred to having spoken to HR who would be arranging a formal meeting. Glenn Sheldrake replied to this e-mail stating that as "*per previous conversations, your interpretation of the discussion is different to mine*" [339]. He concluded the e-mail by stating that "*I will not respond to this e-mail as the situation is now being dealt with by HR where all future conversations can be witnessed and recorded*".

154. In fact, it appears that the Claimant recorded the meeting on 31 January 2022, obviously without Glen Sheldrake being aware, so there is now a transcript of the meeting [763]. The conversation can only really be described as an argument. The Claimant was wanting an answer to the issue she had raised by e-mail about her role. Glenn Sheldrake explained to the Claimant that "(y)*our* (role) *is as a coordinator engineer, ultimately is to coordinate, so you coordinate but you've got engineer experience to put in the coordination too*". The Claimant was unhappy with this explanation and at an early stage in the meeting was saying (ironically given that she was recording the meeting) that she would "*rather this conversation to be formal, like actually I want this conversation to be formal and take minutes and everything because I completely disagree with you*", to which Glenn Sheldrake stated that it would need to be "*in front of HR*". The Claimant suggested that it could be included as part of the flexible working meeting which was due to take place on the following Wednesday. Notwithstanding having seemingly agreed that any meeting should take place with HR, and notwithstanding Glenn Sheldrake having provided an answer, albeit an answer with which she disagreed, the Claimant continued insisting that she wanted an answer and had not been provided with an answer ("*I'm asking a simple question that I want an answer or an email or in any way in writing*"). Glenn Sheldrake sought to answer again saying that "(y)*ou are coordinator engineer, it is in your job role, what you do, you are a coordinator with engineer experience to put in to your coordinating skills*". This then developed into an argument as to whether this had always been the Claimant's role with the Claimant then accusing Glenn Sheldrake of creating "*more stress*" and having her "*going through an amount of stress that is unbelievable*" and "*putting a lot of pressure on me for the past year and I really don't appreciate*". Glenn Sheldrake said "*I can't see it*" to which the Claimant replied that "*you two guys need to start open your eyes and need* (to) *start to see what is happening here*" and "*everyone else can see where the pressure is coming from*". Glenn Sheldrake suggested that the Claimant needed "*to sit down and explain it to me*". He reiterated that this is what "*we do as a department*" and the role "*is the same for you and for everyone, we are all the same*" [764] to which the Claimant replied "*I don't know what anyone else is doing*" but "*I want my job back*". The meeting finally ended with Glenn Sheldrake saying that "*we'll request for Tom that we can't agree and we need HR there is a witness*".

155. Warren Mullem would appear to have been in the office when the meeting on 31 January 2020 took place, as it appears to be one of the matters that the Claimant was asking him about in a list of questions sent on 30 April 2022 to which

he replied on 2 May 2022 [869-870]. His answer to question 28 would appear to be confirming that he had heard raised voices, but not shouting during the meeting.

156. A separate meeting was, in any event, due to take place on 2 February 2022 as to the Claimant's flexible working application. This meeting duly took place on 2 February 2022 between the Claimant, Paul Starkey and Tom Delves. The meeting was recorded with the knowledge of the participants with Tom Delves also making the arrangements for this.

157. On 7 February 2022, Bhupinder Padda, who was the senior engineer on the project the Claimant was working on at the time, e-mailed the Claimant regarding various actions which needed to be taken and the timeframe for doing so. He followed this up with a further e-mail on 8 February 2022. On 14 February 2022 he sent four further e-mails to the Claimant regarding matters on which she was working, which prompted the Claimant to send a reply stating that it "*would be really helpful if you stop bombarding me with emails and let me do some work*" [368]. As a result, Glenn Sheldrake felt the need to e-mail the Claimant making it plain that "(y)*ou should be completing your workload to suit Bhupinder as he is your senior on this project*" [1106].

158. When interviewed as part of the grievance investigation, Bhupinder Padda was asked about the reason for sending the Claimant several e-mails in a short space of time and explained that he had been away from the office and, upon his return, had wanted to check upon the progress on some work tasks that he had asked the Claimant to complete [230]. He was not expecting the Claimant to read them all and respond to them straight away; rather he was sending them to her one by one as he was going through his own checklist.

159. Bhupinder Padda was further interviewed about this issue as part of the grievance appeal investigation [450]. He made it plain that he had returned to work after five or six days' absence, and was getting in touch with the members of his team to check on the progress of work that had been set before he had been absent. He would have been ringing everyone but if someone did not pick up the Skype call then he would have e-mailed them instead [452]. He was asked if he was doing the same with the others in the team and confirmed that he was, though he wouldn't have sent e-mails if he had got through to them on the telephone.

160. Bhupinder Padda was also asked during the grievance appeal investigation about checking when members of the team were inactive on Skype and made it plain that he did not have the time to be monitoring whether someone was inactive on Skype or otherwise as most of the time he was meetings and was only able to catch up with staff at the beginning of the day [452].

161. Other e-mails in the Bundle show Bhupinder Padda chasing the Claimant for updates as to work [1090-1100] and sometimes appearing to be being critical in forwarding the responses to Glenn Sheldrake [749-750] or Paul Starkey [773] or complaining to Paul Starkey about not being able to contact her [776].

162. In the grievance appeal interview, Bhupinder Padda explained that he was having to get updates to report back to his managers [451] the makes it clear that this was the same for all of the members of the team [452].

163. It can be seen that the levels of close scrutiny were not restricted to the Claimant. On 6 January 2022, Glenn Sheldrake e-mailed Bhupinder Padda stating "*I thought we agreed you would call Marta at 4ish every day to run through her work*" and added that the "*same applies to all other Coordinators working for you*" as this "is what we agreed in the lessons learnt" [1100].

164. A former employee, Mercedes Sevilla Gonzalez, subsequently sent the Claimant an e-mail dated 10 April 2022 which stated that "*I'm sending this e-mail to confirm that I found* (it) *really difficult working with Bhupinder, I even issued my notice because it was impossible working in a healthy atmosphere with him*". She concluded by stating that he "*doesn't make things easy at all*" [866].

165. On 17 February 2022, Glenn Sheldrake was promoted to Managing Director of the department. The Grounds of Resistance had suggested that this was as a result of a reshuffle of Directors within his division [44]. In her Statement of Evidence [C59], the Claimant took issue with this explanation and suggested that Glenn Sheldrake had been promoted to a position which did not exist previously and that the position of Electrical Director, which he vacated, was never filled.

166. On 17 February 2022 the Claimant was signed off work with the reason given by her GP as stress at work.

167. The evidence of Tom Delves [TD8] was that he had been "*formally made aware of the Claimant's mental health issues when her mental health support worker contacted the respondent on the Claimant's behalf in February 2022 to express concerns about her stress at work*". The support worker first contacted Paul Starkey and Glenn Sheldrake but it was agreed that Tom Delves would be the most appropriate person to respond. A meeting was held with the support worker to discuss the issues and a plan of action was agreed in which the Company would arrange for an occupational health report to be obtained on the Claimant's mental health, would remind the Claimant of the Company's Employee Assistance Programme and inform her of the members of staff who were trained mental health first aiders. His evidence was that any support for her mental health that the Claimant required was provided, including making the occupational health referral on 4 March 2022 [212].

168. On 1 March 2022 the Claimant had returned to work from the sickness absence. On the same date, she wrote to Angela Foster so as to raise a formal grievance against Paul Starkey and Glenn Sheldrake complaining of bullying and harassment as well as complaining that she had been demoted on her return from maternity leave [185]. One of the issues raised was that of not being allowed by Paul Starkey to leave a meeting when she had been leaking breast milk. The letter set out detailed grounds for her grievance. In terms of the outcome being sought the final paragraphs of the letter [192] stated that "*I would like the outcome of this procedure to be given the position of Senior Coordinating Engineer, as I really deserve that promotion and to be allowed to work in a harassment and bulling free environment with my current work arrangements made permanent*".

169. On 3 March 2022, there was a get together for the project on which the Claimant was working. She complains that all of the male engineers were invited and that she was the only engineer not invited [C61]. She had found out about the

gathering from Warren Mullem on 14 February 2022 [786] when she made a handwritten note which was to the effect that Wayne Mullem had been told that "*only the engineers will be invited*" which the Claimant took to be an admission that "*I'm not an engineer on the project*".

170. The Company's position, as set out in its Grounds of Resistance, was that this simply involved the members of the Claimant's team going out for drinks after work and was not an organised work event as such. The Claimant was not in the office that day so was not made aware of this.

171. On 4 March 2022, an occupational health referral was made by Tom Delves [214-215]. The circumstances in which the occupational health referral was being made were described as set out below.

"*Although Marta has mentioned her mental health being affected by work, there has not been an ongoing dialogue with her managers regarding it. Things came to a head recently where Marta felt the demands of her workload were too much and that the Company was not supporting her. She was signed off for two weeks by her GP with workplace stress but has since returned to work. Marta is receiving support from an NHS mental health support nurse, who contacted the Company on Marta's behalf to request the Company consider providing support to her. Following a conversation with her nurse, it was agreed as part of our actions to support Marta, that the Company would make an occupational health referral in order to gain medical advice on the state of Marta's mental health, ascertain her fitness for work and look at recommendations for how the Company can support her now and in the future*".

172. Angela Foster, Senior Human Resources Business Partner, conducted a grievance meeting with the Claimant on 14 March 2022. At the outset of the meeting, it was confirmed that the Claimant's grievance was about alleged bullying and harassment by Paul Starkey and Glenn Sheldrake and their alleged demotion of her. She also alleged that "*another colleague has been also proper harassing me under their supervision*" with this individual identified as Bhupinder Padda [794].

173. Although reference was made to one specific e-mail, the main complaint about Bhupinder Padda was that he was unduly demanding through the number of phone calls and e-mails sent to the Claimant chasing the completion of work. In the course of her interview, the Claimant suggested that other individuals had similarly complained about pressure being put on them by Bhupinder Padda. She referred to Mercedes Sevilla, Ricardo Dias and "*the other Paul*" having handed in their notice [801], albeit Mercedes Sevilla did not leave as she was removed from working with Bhupinder Padda and Ricardo Dias had left and then returned to the Company.

174. In the grievance meeting, the Claimant complained about Paul Starkey making comments to the effect of "*because I say so and I pay your mortgage*". When asked further about this by Angela Foster, the Claimant stated that Paul Starkey had also "*said it to more people apart from me*" as well as also saying to other people "*it is what it is and if you don't like it, leave the Company*" [805].

175. In the grievance meeting, the Claimant also complained that the room allocated for her to express milk was not appropriate. The room had both internal and external windows but there were blinds covering these windows which could be closed. The glazing to the external windows was also covered with a privacy film. By the time of the grievance meeting, it seems that the Claimant's complaints about a lack of privacy had resulted in the window panel in the door also being covered. In the course of the meeting, there was a lengthy discussion as to the extent to which there were gaps in the blinds through which it was possible to look into the room. Angela Foster made the point that "*I wouldn't sit where I can be seen*" but "*I would sit further back where you can't be seen*" [816] although she accepted that "*it could be better*". When the Claimant queried the statement that "*it could be better*", Angela Foster stated that "*we have to work on what we've got don't we?*". In any event, it seems clear that Angela Foster was persuaded that the Claimant's concerns regarding privacy were overstated. Having seen the photographs of the room [609-615, 626, 754], the Tribunal accepted her evidence, as set out in her Statement of Evidence [AF10], that, realistically, nobody from outside the HR meeting room would be able to see the Claimant expressing milk.

176. The Claimant also complained that previously she had found that the room was required for a meeting. Angela Foster confirmed that this was no longer the case that the room was now "*knocked out for all on Mondays*" [817].

177. In the grievance meeting, the Claimant described a meeting in the office (although some of the participants were attending by conference call) approximately a month and a half previously, in which she suddenly found that her breast milk was leaking [817]. She described, after she had made her contribution to the meeting, trying to excuse herself by asking "do you need anything else for me?" However, Paul Starkey asked her to stay until everyone else had finished. She suggested that she had asked Bhupinder Padda to cover for her as she really needed to go and he had also said that she needed to stay. However, Warren Mullem had said that she should just stand up and go. In the grievance investigation interview the Claimant accepted that she had then left of her own accord. Indeed, the transcript of the grievance investigation interview records Angela Foster raising the possibility that if a new mother was asking to be excused, then it would not be necessary to ask for a reason and it would be simply a matter of excusing the employee [819].

178. At one point in the interview, Angela Foster suggested that the situation described by the Claimant was "*not acceptable*" if "*that is how it happened*" but said that she would be "*asking about this*" [819].

179. When this comment was put to Angela Foster when she was cross-examined, she explained that the Claimant had made her think that Paul Starkey could see that she was leaking milk, whereas it transpired that this was not factually correct.

180. In the grievance meeting, the Claimant also described comments made by Paul Starkey suggesting that her husband was getting paid a bonus twice [822]. Angela Foster specifically asked the Claimant as to whether this had been said in front of the Claimant and the Claimant replied that it had not and "*my husband told me*". This is inconsistent with the discussion about the same matter in the appraisal

meeting where the Claimant specifically told Paul Starkey "*I heard you saying you've got the bonus twice*" [1077]. From context of the discussion, it seemed likely that the Claimant was suggesting to Paul Starkey that she had heard the comment so as to avoid Paul Starkey thinking that her husband was reporting conversations back to her.

181. As part of the grievance investigation, Angela Foster interviewed Paul Starkey, Glenn Sheldrake, Bhupinder Padda and Warren Mullem. She also got these individuals to confirm that the notes made of their interviews were accurate. In any event, the interviews were also recorded, although it was made clear that the recordings would be destroyed once the notes of the interviews had been produced. Other individuals such as Mercedes Sevilla and Ricardo Dias were not interviewed.

182. In the course of his interview, Glenn Sheldrake was asked to describe his working relationship with the Claimant. He initially answered by saying that it was "*not ideal at the moment*" [220] and when asked to explain that he said that there was "*no communication, she doesn't speak to me*" and recently "*conversations have turned into Marta shouting at me*". When asked as to how he reacted when she shouted at him, he replied that "*I tell her to calm down, I tell her we need to discuss things in a normal way*" [220].

183. Later in the interview, Angela Foster asked him if he considered that the relationship could be repaired, which resulted in the exchange [223] set out below.

"*AF Do you think this relationship can be repaired?*

GS Not if she keeps behaving the way she behaves now. I actually feel bullied by her. All she does is shout and the whole situation really affects me, I cannot switch off at home.

AF Can you say that every time you talk to her she treats you in the same way, by shouting and being disrespectful toward you?

GS Yes.

AF Have you tried to remind her that she should be speaking to you in a respectful way and not be shouting at you?

*GS No, I don't want to have those conversations with her. I try to stay calm. It affects Paul even more, he can't enjoy his weekends anymore. We wonder what we have done wron*g".

184. In the course of his interview, Paul Starkey was similarly asked to describe his working relationship with the Claimant [225]. He replied that she "*doesn't want to engage in conversations, it is difficult in general*".

185. Paul Starkey was asked if he had told the Claimant's husband that he had received a bonus twice. He explained the context of the conversation and said that he had said "*they may be asking why you receive two bonuses*" [226].

186. Angela Foster told Paul Starkey that the Claimant "*is under the impression that she should be doing the same role as Bhupinder who is her senior*" to which Paul Starkey replied that "*she doesn't have that experience*" and to "*become Senior Engineer she would need to be in the role for around 10 years*" [228].

187. In the course of the grievance investigation, Angela Foster asked Bhupinder Padda if he had heard the Claimant shouting or raising her voice when talking to Glenn Sheldrake or Paul Starkey. He replied in the affirmative and referred to an occasion when he had heard raised voices in Glenn Sheldrake's office [231].

188. Warren Mullem was also interviewed by Angela Foster. In the course of being cross-examined during the Tribunal hearing, the Claimant accepted that Warren Mullem was a friend. In the course of his interview, Warren Mullem was asked whether, in his opinion "*does Marta have a reason to raise this grievance?*" [235]. His answer was originally recorded in the notes of the interview in the terms set out below.

"*It is very difficult. I don't think she has been discriminated against. It may be because she is kind of a hot headed person and they don't really know how to deal with that, it can turn into a big thing and arguments*" [1226].

189. Warren Mullem was subsequently asked to check the record of the interview and in relation to this answer he commented that he could not "*recall word for word but I think I mentioned they clash and that Glenn/Paul don't have the greatest people skills*" [1226]. He also stated that Angela Foster "*also mentioned about intimidating and bullying which I couldn't comment on as I only see her in the office 1 day a week so I wouldn't know if this happened*" [1226].

190. In the final record of his interview, it is to be noted that Warren Mullem's answer to this question has simply been replaced by his comments on his answer, which had not actually said that his original answer was wrong [235].

191. Angela Foster asked Warren Mullem if he had witnessed the Claimant being treated differently compared to anyone else and he replied "*No I don't think so*" and had stated that "*Glenn and Paul are quite strict and they treat everyone equally*" [235]. Later on, he was asked whether they were "*like this with everyone or just Marta?*". He replied that they "*treat everyone in the same way*" [235].

192. On the subject of the Claimant's role, when Warren Mullem was asked if the Claimant was doing the same role as she used to do, he replied that she "*does the same role but with different components*" and stated that she "*helps on the projects which is part of her role*" [235].

193. Paul Starkey, Bhupinder Padda and Warren Mullem were all asked about the meeting described by the Claimant on the basis that she had been leaking milk and had been refused permission to leave when she had sought to leave. From Paul Starkey's evidence to the Tribunal, this was an in-house model review meeting where everyone was encouraged to stay to the end to understand any issues and to develop skillsets. This is consistent with the Claimant's explanation of the meeting in the grievance investigation interview where she clearly understood that it was not just a question of making her own contribution and going,

rather the format of the meeting was to "*wait for everyone else to finish*" [817]. Paul Starkey explained to Angela Foster that the Claimant had asked to leave the meeting and that he had indicated that he would prefer if she stayed. The reason for this was because, during the previous meeting which had taken place the previous week, the Claimant had left without any notice or approval from anyone [226]. Bhupinder Padda also referred to the Claimant having left the previous meeting without any notice [231]. Warren Mullem thought that they might not have been impressed with her attitude in the past [235] or with her contribution to the model reviews.

194. On 15 March 2022, Tom Delves e-mailed to the Claimant a letter dated 14 March 2022 with the outcome of her most recent flexible working application [1114]. The letter stated that the request could not be accommodated because of the "*following business grounds" namely detrimental effect on ability to meet customer demand, detrimental impact on quality and detrimental impact on performance*". The letter then set out a number of bullet points providing the details of the reasoning by which the decision had been reached, as set out below.

(1) "*You are currently working a temporary flexible working pattern, as outlined above, for a fixed period of 12 months which commenced on 22nd April 2021 and will finish on 22nd April 2022. This temporary flexible working pattern was agreed on the basis that it was a temporary change to your working pattern and was set against the wider picture of the Covid-19 pandemic when our clients, staff and wider industry were working from home with no requirement to attend meetings or provide work on site or in the office*".

(2) "*Your current working pattern has therefore been managed on a temporary basis and your role has been scaled back due to the disruption on the Company's workload caused by Covid-19. As you are aware, you have therefore not been undertaking the full remit of your role during your current working pattern, and have been working for example on cut sheets on the 21 Moorfields project. This accommodated your temporary working arrangement and with the ongoing disruption caused by Covid-19 allowed for the working pattern to be managed for the fixed term duration it was agreed on*".

(3) "*However since the beginning of 2022 the Company, our clients and the industry has begun to move towards "business as normal", with the expectation from our clients and project teams that our many of our work activities will revert back to being held on a face-to-face basis in either the office or site. Your proposed flexible working pattern would prevent you from meeting this requirement and therefore may present a detrimental effect on meeting our client's demands*".

(4) "*Your role as a Coordinating Engineer requires you to work closely with the Project/Site team in the preparation of coordinated drawings. Key to this requirement is the ability for you to collaborate, cooperate and communicate closely with Project Managers and other members of the project team regarding drawings and the provision of technical support as and when required. This will increasingly become a requirement to be carried out at an office/site level. Furthermore, the business recognises that the provision and quality of this support*

is best carried out at a face-to-face level. The use of Skype or Teams to communicate with your stakeholders is not always an efficient alternative. Under your proposed flexible working pattern, the majority of your support will be conducted under such means and therefore poses a risk of detrimental impact on quality and performance".

(5) "*You are also required to attend a variety of other meetings, including those with clients, your coordination team, the department as a whole and internal Company meetings. As we move out of the Covid-19 pandemic, the location of these meetings will increasingly be at our Head Office or on site and, further, may be arranged at short notice at the client's request. Your proposed flexible working pattern would therefore present difficulties for you to attend these meetings in person. While use of Skype to attend meetings is theoretically possible, it is not an entirely acceptable alternative on a permanent basis, especially for meetings on site where technological facilities may not be available or where on-site attendance is demanded by the client*".

(6) "*Additionally, as the Company and wider industry moves away from Covid-19 and begins to settle down, you may be required as part of your role to attend site to conduct site surveys, monitor installations, as well as the above-mentioned meetings. You may also be required to attend Factory Witness Tests. Your proposed flexible working pattern therefore presents numerous difficulties in arranging these activities due to your availability to attend site being limited to one day per week*".

(7) "*As you are aware, you are also required to work with a CAD team to produce project drawings. This collaboration involves regular attendance in the office to assist with queries, questions and other support and is not well suited to remote working. Your proposed flexible working pattern would therefore present a detrimental impact on your means to work collaboratively and support the CAD team*".

195. A further consideration was effectively stated to be that the "*Company has a Home Working policy which allows you to work up to 2 days per week at home depending on your workload and subject to management approval*".

196. On 17 March 2022, the Claimant appealed against this decision rejecting her flexible working application [1117]. The grounds of appeal involved a detailed critique of the reasons put forward in the decision letter, as summarised below.

(1) she stated that her previous flexible working arrangements pre-dated the pandemic and had expired in July 2020 and she did not regard the pandemic as having been a factor in her current flexible working arrangements which dated from April 2021.

(2) Although she accepted that there was less work in the Company due to the pandemic, her own department had had plenty of work secured. She took issue with the suggestion that her work had been scaled back due to the disruption of

the Company's workload caused by the pandemic. She stated that she had been engaged in significant project work, including, at one time, dealing with up to three projects on her own, following her return from maternity leave in 2020, which had necessitated working extra hours. She referred to minutes from a managers' meeting in November 2020 suggesting that the Company was on track to achieve its pre-pandemic financial business targets and that the Company's order book was in a strong position for the next financial year. She stated that, in August 2021, it was only as a result of not having been allocated the mechanical side of the Lon 2 project, without good reason, which left her without any work and so having to "*keep doing the CAD coordinator role*" whilst getting comments that she should be thankful that she still had a job when a number of people who had lost their jobs. She suggested that the Company had demoted her by not letting her work as a Coordinating Engineer and this was in breach of her rights to return to the same job after maternity leave.

(3) She did not accept that there was a move towards reverting back to work activities being held on a face-to-face basis in either the office or on site. Both of the engineers working on the project on which the Claimant was currently working, namely Warren Mullem and Bhupinder Padda had permanent flexible working agreements under which they did not work in the office on certain days she had made it plain that if there was a need to attend a meeting on site then she would be willing to do so.

(4) She took issue with the suggestion that the "*business recognises that the provision and quality of this support … is best carried out at a face-to-face level*". She suggested that she had been working from home since 2019 without anyone suggesting any detrimental impact upon the quality of her performance and this was supported by the comments of Paul Starkey in her 2020 appraisal as well as other documents to which she referred.

(5) She disputed any suggestion that there might be technical or practical issues which would present difficulties in terms of attending meetings from home as all of the sites on which the department worked with fully equipped to accommodate online attendance at meetings.

(6) She took issue as to the extent of any requirement to conduct site surveys, monitor installations or attend factory witness tests on site.

(7) In so far as it was suggested that regular attendance in the office was necessary to work with a CAD team to produce regular drawings, she had previously dealt satisfactorily with a big team of CAD coordinators from home.

197. The Claimant concluded by requesting a response to her appeal within five days, failing which she would have to raise the matter with the Employment Tribunal.

198. As a result of the occupational health referral, an appointment with a consultant psychiatrist took place on 17 March 2022. The resultant report [217]

stated that the Claimant "*has been suffering with work related stress which has since morphed into a moderate depressed episode with associated anxiety*". There had been some improvement since the nadir described as having been reached in December 2021 and it was stated that the Claimant had "*recovered significantly but continues to feel under stress*". It was further stated that the Claimant's "*mood is much improved at the weekend, although not quite back to normal and deteriorates significantly when contemplating returning to work on Sunday evenings*".

199. The occupational health report does record the history given by the Claimant as including reporting "*excessive workload*" with reference being made to receiving "*a barrage of e-mails*" which would seem to refer to being e-mailed by Bhupinder Padda, in particular the e-mails sent on 14 February 2022 [219].

200. In terms of any modifications which would facilitate a return to work, the report noted that the Claimant had returned to work but suggested that, until "*the reported work related stressors have been investigated and the process concluded, I wonder whether the business could support Marta by allowing her to work from home in a full time capacity as she reports a significant increase in stress when returning to the office one day per week*". It was also stated that assessing "*her workload and reducing this if deemed excessive is also likely to be of support*".

201. In the meantime, there had been a series of e-mails with Paul Starkey regarding the fact that the Claimant was not due to be coming into work on the forthcoming Monday as she had booked leave on this date [345-349]. Earlier communications had raised the possibility of the Claimant coming in on a different day on the basis that Paul Starkey thought that it would be beneficial to the project on which she was working if she could come in on "*one of the days when Warren and Bhupinder are in to collaborate with the rest of the project team*". The Claimant had replied effectively querying the request from Paul Starkey that she should agree a date to come into work. Paul Starkey's reply had dealt with the queries and reiterated the request for the Claimant to come in on the day which best suited the project. The Claimant had replied to this stating that "*I will speak to Warren and will do my best to suit your requirements*". In the event, she had e-mailed again on 18 March 2022 to state that she had now spoken with Warren Mullem who told her that there was "*no need for me to attend the office another day in the week as there is no benefits for the project at all for me being in the office*". As such, she stated that "*I will work from home the rest of the week*". Paul Starkey replied on the same date stating that "*I have spoken with Warren, he said he did not need you in the office for the tasks you are doing for him at the moment, however he did not say that there would be no benefit to the project for you coming in and collaborating with the rest of the team*". As such, Paul Starkey stated that "*I will leave this up to you as to what you think is best for the project and the team ethics!*". The Claimant subsequently e-mailed Tom Delves, a little sarcastically, suggesting that she was being sexually discriminated against because the rota for the following week showed that her colleagues, Neil Bakewell and Ricardo Dias were also on holiday that week on a Monday and Tuesday but were not making up for the days that they were on holiday "*for the so* (called) *alleged benefit of the project and the team ethics*" [307]. Looking at the rota, the difference between their circumstances and

that of the Claimant is that they were already due to come into the office on later days that week [308].

202. On 23 March 2022 the Claimant had notified ACAS of a prospective Claim against the First Respondent.

203. The Claimant's appeal against the rejection of her flexible working application was considered at a meeting conducted by Remi Suzan on 30 March 2022. The Company's minutes [242] of the flexible working appeal referred to Remi Suzan as the investigating manager considering the appeal. Clearly, any appeal needed to be considered by a different decision maker from the decision maker who had made the decision in respect of the original request. Similarly, a different HR officer attended the flexible working appeal, namely Oliver Dawson, HR Business Partner. The arrangements for the meeting had been made on the basis that an HR administrator, Marta Czyz, would attend to take a note of the meeting with a copy of the notes being provided after the meeting. In fact, it transpired that the Claimant had also recorded the meeting, with a transcript [256] subsequently been made of that recording.

204. It is be noted that, during the course of the meeting, the Claimant generally sought to suggest (in support of her case that her fresh application should be allowed) that the previous flexible working arrangements had worked well. She stressed that, since 2019, there had been no real difficulty arranging meetings with clients for Mondays rather than any other day of the week, but "*if for any reason they couldn't arrange it on a Monday and I needed to come another day, I have always done it*" [266].

205. In the course of the meeting, Remi Suzan effectively suggested that working from home was holding the Claimant back in terms of job and career progression. His point of view was that the Claimant was not getting the experience that she needed to be getting on site and *"I don't see how you can do that sitting remotely at home* (and) *that's why, to be honest with you, Marta, the reason why you've been given easier work is because that is the easiest solution to keep you busy*" [268]. Additionally, the role that the Claimant had done "*that was there for Moorfields and Wimbledon is not there at the moment*". He was effectively suggesting that if the Claimant had not been given the work which she had been given, it would have been necessary to furlough her, albeit, as at March 2022, this was no longer an option.

206. At a later point in the meeting, there was a discussion as to the extent to which he might be necessary for the Claimant to attend work outside of the office, such as site surveys, attending problem meetings on site and factory testing. In relation to the issue of factory testing, Remi Suzan effectively referred to this as another example of the point which had been made earlier which related to her lack of engineering experience and the suggestion that working four days a week from home would prevent the Claimant from getting the exposure to the experience that she needed. He stated that "*factory testing is something that happens that engineers need to attend and you're right, you've never been asked to go because I come back to that what I said earlier …. if you were asked to go and witness a chiller test, you wouldn't actually know what you're looking at Marta …. it'd be pointless sending you to a factory test*" [279].

207. In her Particulars of Claim [24] the Claimant has complained about Remi Suzan making comments during this meeting to the effect that she did "*not have the engineering knowledge*", and complains that this amounted to harassment contrary to Equality Act 2010 section 26.

208. These comments need to be considered in context. The first such comment was in the context of the Claimant not having experience or knowledge for part of her role as a Coordinating Engineer which was explained by Remi Suzan in the terms set out below.

"*Remi Suzan: In terms of… and…let me be completely honest… as I try to be always. In terms of the role Coordinating Engineer, I know because I created it, there was no such thing as a Coordinating Engineer before I penned the term and wrote the job description… but there are two aspects to that role and I think,,, you know… and that's always been clear… so there's the process role of managing a CAD team to produce product drawings… yeah?…and… I can without doubt state that that is your strength Marta. It always has been, the management, the process of managing and producing drawings. Yeah?… No doubt about that at all….the second aspect of the Coordinating Engineer is the engineering part of the role… yeah?…and again… I think I've always been honest with you, even when I promoted you into that role, and subsequently in the appraisals we had prior to me moving on...that was an element of the role which you didn't have the experience and you didn't have the qualifications or the knowledge of*" [262].

209. This explanation was being given as part of a discussion which was largely being driven by the Claimant regarding her concern that, following her return from maternity leave, she was not getting jobs which were landing in the department which were suited to her job role. In this context, Remi Suzan provided the explanation set out below.

"*And… look, I'll be honest, I think if they tried to give you… say… a heavily engineering data center project and said… in order to do the full gambit of the Coordinating Engineer, which is to assist design, check the content… the engineering content of the drawing… along with the coordination and the production… I think you would struggle with that because you still haven't actually got that experience to do that side of the role. Now, there are others in the department which are converse, different… you know… you… like… you've got someone like Warren, who's exceptional with the engineering side of it, but is nowhere near as good as you on the production and the management side of it, so you've got to measure up, you know, supply... This person is really good at this part of the job, but not so good at this part of the job, and this person is the opposite… is really good at the other bit, but he's not as good on that. The ideal way, I guess… or of…trying to merge that together from a management point of view is to recognize their strengths and weaknesses and to try and then feed those people into the appropriate slots until they both come up and learn off each other as to getting better at the opposite side of the job*" [262].

210. Thus, Remi Suzan went on to explain that it was a question of giving the Claimant exposure to suitable projects such as a small mechanical design project but that this was "*nowhere near the same as…. say a complicated office block, like 21 Moorfield or a data center… you know… it wouldn't be fair to just throw Marta in the building and say, right, you need to do that* …" [263].

211. Remi Suzan went on to reiterate that as "*you don't have the experience or the knowledge to do the other part of it … it was always recognized that we needed to work with you to get you up to speed on the second half*" [263].

212. Remi Suzan also explained that a further factor related to the nature of the available jobs which the Company had, as set out below.

"*I don't have any jobs at the moment, which is predominantly the production of just lots of drawings. All the jobs we have currently going through the business are engineering driven production within the drawings, and the management of the design and the production of the drawings, not just production of the physical drawings themselves. And therefore, it's more difficult to use you remotely… when you don't have the skill set to do that*…" [263-264].

213. Remi Suzan had understood the Claimant to be suggesting in her appeal letter that she wanted "*to be treated like Warren Mullem*" and "*to be able to run complicated …* " [267] to which the Claimant replied "*I haven't said that I want to be treated like Warren Mullem at all, ever!*". At this point, Remi Suzan referred to the Claimant having raised the issue of not having been given the "*Lon two*" project. which prompted the exchange [267] set out below.

"*Remi Suzan: you couldn't have… you couldn't have done Lon two, Marta. That's me being honest, you could not have run Lon two.*

Marta Sabio: But why… why are you saying that, when you haven't even given me the chance?

Remi Suzan: Marta, you don't have the engineering knowledge to do that.

Marta Sabio: I am a Mechanical Engineer, do you want me to show you my degree, Remi?

Remi Suzan: You don't have the knowledge to do that job. And it wouldn't be fair for anyone in terms of….

Marta Sabio: It's much more fair to give me a role as a CAD coordinator. Is that what you're saying? To demote me is fair…

Remi Suzan: Marta, that's a hundred million pound job. You make a mistake on a job of that scale, that could sink the Company. So even from a risk assessment point of view, it's not fair of the business to give you the opportunity to muck up a job of that scale".

214. When the Claimant sought to query whether Mark Basker had the knowledge to take on this project, Remi Suzan contrasted his knowledge and experience with that of the Claimant [267] in the terms set out below.

"*He's certainly developing that knowledge and he's demonstrating the ability to do that because he's, you know, he sat for three years at 21 Moorfields with the Mechanical and Electrical… not just design engineers, but with construction engineers. He has that knowledge, he has that experience to know how things work, what things are, how they go together and how they're installed and what you can and can't do on a building site. Marta, you don't have that!*"

215. In so far as the Claimant was seeking to argue that flexible working arrangements had been working perfectly for a number of years, Remi Suzan suggested that that might be the case in respect of "*doing the drawing work*" [272] but "*I would say it hasn't been working well for three years because of how this is where we are now*" and the Claimant's "*relationship with the department, the management, the Company appears to have completely broken down*". The Claimant retorted that "*the relationship with … management being broken is on a grievance complaint for being bullied, harassed and discriminated is nothing to do with working from home*". Remi Susan took issue with this, as recorded in the transcript, as set out below.

"*Remi Suzan: You don't think that. The arrangement has had any weight behind that. And that had you not had children and continue to come into the office, then you'd be in exactly the same position*".

216. The transcript then records the Claimant's reply as below.

"*Marta Sabio: the children. Having my children is the best thing that I have done in my life. So if you are suggesting that my children that if I should have had children and my life will be better. No, my life is much better since I've got my children*".

217. Clearly, Remi Suzan was not suggesting that the Claimant should not have had her children. The transcript records him replying as below.

"*Remi Suzan: All I ask Marta Is the fact that you've worked remotely for three years you've said has had no impact on your role in the business? Where you know what I'm hearing and made aware of is that there has been an impact*". [273].

218. Remi Suzan also needed to be clear that the Company had to take into account the fact that, whereas previous home working arrangements which had been agreed had been temporary arrangements, this new application was for permanent home working arrangements, as he explained below.

"*I think what you've got to look at, though, in context for this is… is that this isn't… you know… a temporary request. This is a permanent request for ever, then you're a very young individual Marta, you've still got 20 years of work, 30 years of work ahead of you... so you can't just look at it… Well, at the moment, the world is sitting in teams meetings and it's going to be like that forever because it might not be like*

that in six months. It might not, you know, it might not be like that in two years, three years, four years, five years, 10 years, 15 years, 20 years" [266].

219. The immediate response of the Claimant as recorded in the transcript was as below.

"*Yeah, that's all right. But why…*".

220. In replying further to these points made by Remi Suzan, the Claimant did not seek to suggest that this discriminated against her because of her age but suggested that the arrangements could be made permanent because "*it has worked since 2019*", although the position of Remi Suzan was that "*the world has been forced to work like that*" [266].

221. Late in the meeting, when being invited to put forward alternative arrangements to those involved in her request, the Claimant specifically referenced Remi Suzan's point about the length of time any permanent arrangements would potentially be in place, and stated "*an alternative for me would have been that the Company said to me… look, we don't want to do it permanent forever, because like Remi says, you're really young and you've got 30 years more to work for the Company, if they don't fire me before, but, but, what about, let's do this for the next four years until your baby goes to school and then you come back to the office*" [270].

222. The Claimant had raised the issue of Warren Mullem and Bhupinder Padda having flexible working arrangements in place, which involved attending the office on three fixed days a week. She was specifically asked if "*that could that be an alternative for you, that three days fixed*" to which the Claimant replied in the negative saying "*I can't do three days in the office right now, no*" [270].

223. In her Statement of Evidence, the Claimant has complained that Remi Suzan was not impartial in dealing with the application and referred the Tribunal to the discussion which the transcript recorded as having taken place at page 274 in the Bundle. The context was that Oliver Dawson had asked the Claimant if she was willing to be flexible if she was working four days a week from home, and the need arose to come into work on a different day. The Claimant's reply had given the example of a Wednesday when she had been willing to come into work as there was "*a reason behind it*", but she was not willing to do so if it was an exercise in making her come into work without a reason. At this point, she asked Remi Suzan to agree that she had "*always been flexible?*" Remi Suzan replied [274] as set out below.

"*Marta I'm not. I take issue over the fact that you'll only come in if there's a reason that you deem acceptable because the rest of the business doesn't work that way. The rest of the business have accepted the Company's view that it believes there are benefits for its staff to be in the office three days a week. Whether there is a good reason or not*".

224. Towards the end of the meeting, the Claimant herself specifically raised the issue as to whether the Company was going to consider the recommendations in

the occupational health report [277]. The transcript records the Claimant having specifically referred to the recommendation made in the report on the basis that it said that "*it will be beneficial for me to work from home every time, all the time*" and asked if that was something that the Company was going to consider [277]. Oliver Dawson, as the HR Business Partner attending the meeting confirmed that he had had access to the report, although he suggested that it had only been received that day. Claimant suggested that it had been received the previous Friday which would have been 25 March 2022. From the transcript, it seems that Oliver Dawson sought to explain the limited and qualified nature of the recommendation which had been made. He also made it clear that the process of considering whether or not to implement the occupational health recommendations was a separate process from that of considering the flexible working request, in that the report would need to be discussed with the manager responsible for the referral. The Claimant's companion, Roberta Flexen, then sought to take issue with any suggestion that the report did not relate to the flexible working request on the basis that it was indicating that it would be "*useful for her to work from home for her mental health*". It was at this point that the transcript shows Remi Suzan making the comment "*not forever*", from which it is clear that he understood, as would be apparent from the discussion about the recommendation which had already taken place in the meeting, that any occupational health recommendation was potentially a short-term measure whereas allowing the flexible working request potentially had an indefinite effect. However, it is to be noted that the Claimant was effectively inviting Remi Suzan to take account of the occupational health report rather than suggesting that it should not be disclosed to him.

225. On 4 April 2022, Oliver Dawson, HR Business Partner, sent the Claimant a letter with the decision as to the outcome of her flexible working appeal which was rejected [290-293]. Reliance was placed on the same grounds as previously, namely the detrimental effect on ability to meet customer demand, detrimental impact on quality and detrimental impact on performance. The letter then set out the reasons under sub-headings for each appeal point as below.

"*Appeal Point 1*

You stated that your current temporary flexible working request was agreed to take effect on your return from maternity in April 2021. Therefore, you believe this had 'nothing to do with COVID'. However, even though your request was not due to take effect until April 2021, it is clear to us that your request was agreed on 13 November 2020, during a national lockdown, and there was reasonable belief that COV1D would continue to have a substantial impact on business operations for at least a substantial period of your 12-month request.

Additionally, you mentioned that you believe your applications were agreed due to your maternity, not because they were temporary requests. We conclude that although extra consideration was given on the basis of your maternity, the fact that both applications were only temporary, for periods of 12 months at a time, this provided the Company with an opportunity to put short-term mitigations in place and approve your request.

Appeal Point 2

Your 2nd appeal point is that you agree that your work has been scaled back but believe this is because of a demotion not because of COVID. You currently have an ongoing grievance to investigate this allegation. Therefore, we agree you have not been undertaking the full remit of your role during your most recent working pattern. However, as discussed it is our belief that this is because you require development and mentorship within the engineering element of your role. Consequently, as this development will involve learning of a physical and practical nature, it Is our reasonable belief that should your request be accepted, this would put your learning at a detriment and ultimately impact the quality and performance of your role.

Appeal Point 3

Your 3rd point of appeal is that you disagree that the industry has returned to 'business as normal', and there is not an expectation for work activities to revert back to face-to-face in either the office or site.

You mention that the current project you work on is conducted online and clients can be flexible to suit the day you would work. We agree that some projects have or will be conducted online. However, we are unable to guarantee that future projects will take this approach, or that the client will be happy to accommodate homeworking. Further, as we are a service providing business, we are inevitably led by our clients' requests and requirements. Consequently, as this is a permanent flexible working request, should it be accepted this may present a detrimental effect on us meeting client demands in the future.

Further, you mention that other engineers have had flexible working requests accepted where they only work certain days as well. However, when discussed, it was agreed that they do not work only one day a week in the office/site, and that their working patterns would not be suitable to you either. Furthermore, I can (confirm) *that all flexible working requests are considered on a case by case basis and assessed based on the business circumstances at the time of the request.*

Appeal Point 4 & 7

You are appealing the Company's view that the provision and quality of your support and role is best carried out at a face-to-face level for the following reasons:

You have been working the same working pattern since 2019 with no complaints around your performance.

During COVID everybody was working from home

You do not believe that there Is a substantial difference between working 1 day in the office/site, compared to working 3.

It is agreed that you have been working either this pattern or fully at home since your first flexible working request was accepted. However, this has always been in

the view that it was a temporary amendment to your working pattern. We agree that there are elements of your role that can be completed from home, hence why we would be happy to work with you in line with the Home Working Policy. However, it is our belief that there are benefits to working in the office greater than one day a week, including but not limited to maintaining working relationships, inducting new team members, and developing your engineering knowledge. Therefore, should we accept your permanent flexible working request we believe that this will have a negative impact on the performance and quality of your role. You mentioned that you believe some people are working from home full-time, therefore you cannot see why the same application cannot be given to you. Upon review, we cannot see anyone with the same or similar role to you working from home full-time. Further, as each flexible working request is agreed based on individual roles and their merits, we must review each application on a case-by-case basis.

Appeal Point 5

Your 5th point of appeal is that you believe that it is an untruthful statement that sites may not have the technological facilities to accommodate your working pattern or to hold meetings virtually. In particular, you mention that all sites are fully equipped with PCs and printers. We agree that some sites are equipped with the required technology. However, given this is a permanent request, we are unable to guarantee that future projects will be the same, or that the client will be happy to accommodate virtual meetings. In addition, your role will include conducting surveys and presentations, which can present difficulties when conducted online. As a result, should we accept your flexible working request this may have a detrimental impact on the quality of your performance.

Appeal Point 6

Your appeal regarding point 6 is that you have not been required to attend a Factory Witness test to date, and you are unable to see why these cannot be held on a Monday. We agree that you have not completed a Factory Witness Test to date, but this is due to a lack of engineering knowledge on your side, rather than it not being within the remit of your role. As discussed in appeal point 2, we believe to get you working to the full remit of your role you require the development and mentorship on the engineering element of your role, which we believe will be difficult to give to you based on your flexible working request. Additionally, factory Witness Tests often take 2-3 full days, and we cannot guarantee that these can be arranged for a Monday. As a result, should we accept your flexible working request we believe it may have a detrimental impact on Future performance.

Additional/Transcending Points

Flexibility

You mention that you stated in your application that you would always be flexible to attend the office/site. You believe that this point was ignored when Paul Starkey

and Tom Delves came to an outcome. Upon review, we can see this was not ignored within your application. For example, within your meeting notes with Paul and Tom, flexibility was discussed and noted. Further, this was also demonstrated within your appeal meeting, where you mentioned that you would be flexible within reason, such as if there is a business reason or if nobody else was already in the office that can do said activity. However, you would not attend should you believe it is only because the Company or a certain manager wants you to come in. Therefore, it is deemed that your flexibility would not be guaranteed and will not therefore be a workable solution to suit and meet the needs and requirements of the Company.

No Alternative was provided

You mention that you believe you were not provided with an alternative working pattern to consider before your request was declined. It can be viewed within your meeting notes with Paul and Tom, and confirmed within our appeal, that you did not provide them with a specific alternative pattern for them to consider. However, you mentioned that you would be happy to review any alternatives that the Company wishes to put forward. Your outcome letter put forward an alternative suggestion of working with you through the Home Working Policy. However, you dismissed that this is a suitable alternative.

Although there can be debate on whether the Home Working Policy is a suitable alternative, ultimately, it is not for the Company to provide you with a 'suitable' alternative when declining your application, I am confident that should you have provided or requested a suitable alternative pattern to considered, Paul and Tom would have investigated this".

226. The Tribunal accepted the evidence of Remi Suzan confirming the circumstances set out in the appeal decision letter and further accepted that it was an analysis of the position which it was open to the Company to make and which was not based on incorrect facts.

227. When interviewed as part of the grievance investigation appeal, Glenn Sheldrake described the work which the Claimant had been doing [470-471] and referred to another Coordinating Engineer namely Mark Baskar, as being in the same position as the Claimant in that "he's also a Coordinating Engineer, and he does the same work as Marta, it's coordinating and it is coordinating, you're coordinating with an engineer with experience" [470].

228. Shortly before the flexible working appeal decision letter had been e-mailed to her, the Claimant had e-mailed Paul Starkey and Glen Sheldrake stating that "*I'm feeling really stressed due to the amount of things that have been going on at work with HR and all the other things at the same time*". She stated that "*I'm not feeling really well and I will take the rest of the day as of sick*" [853].

229. On 6 April 2022 the Claimant was signed off work by her GP for one week due to stress at work. On the same date, Sam Pearson, described as a "Mental Health Coach for vitaminds/vitahealth" provided a short letter explaining his

involvement since January 2022 and stating that he "*had advised her to speak to her GP again as it appears that her feelings of distress are escalating as a result of the issues describes*" [863].

230. On 8 April 2022, the Claimant was e-mailed [1143] a letter dated 30 March 2022 [238-241] in which Angela Foster provided notification of the decision rejecting the Claimant's grievance. The letter also refers to providing the Claimant with an "*evidence pack*" from the grievance investigation.

231. One of the issues which had been investigated was the incident raised by the Claimant regarding not having allowed her to leave the meeting after she had asked to be excused because she was in discomfort as she was leaking milk. The decision letter set out the findings of the investigation in relation to this issue, as set out below.

"*Statements from Bhupinder, Warren and Paul himself all conclude that Paul was not aware of the reason you wished to leave the meeting as Paul had joined the meeting remotely and did not see what had happened to you. Bhupinder and Warren were both in the room with you and they were also not aware of the reason you needed to leave until after the meeting. Therefore there is no evidence supporting your allegation that Paul knew what was happening and refused to let you leave the meeting. Paul did provide some context around the reason why he declined your request to leave. Paul stated that the week before you had left the meeting without explanation and therefore he required you to stay for the whole duration of the meeting. He did however state that had he been aware of the reason you needed to leave, then of course he would have not hesitated to agree for you to be excused*".

232. In relation to the Claimant's complaint alleging that she had been demoted, the findings of the grievance investigation were as set out below.

"*I have not found any evidence supporting this claim. Both Glenn and Paul maintain that you are performing your role as a Coordinating Engineer. Producing drawings is a large part of that and Paul has stated that managing a CAD team is not a part of your role and that you do lack some of the engineer knowledge. You were told that it needed to be improved. It appears that you have been given the work that has been available taking into COVID into account. Remi has also stated that whilst you are very good at the management and production side of your role, you have struggled with the engineering aspect of your role which has been* (fed) *back to you.* (Neither) (y)*our job title nor your salary have been changed, therefore I am satisfied that there is no evidence to demonstrate a demotion of your job role*" [240-241].

233. When Bhupinder Padda had been asked about this issue in the course of the grievance investigation and as to whether he agreed that the Claimant had been demoted, he stated that "*she hasn't been demoted, she does elements of a CAD Coordinator role which are part of a Coordinating Engineer role, both of the roles are very similar*" [231].

234. Although the specific complaints were not upheld, the decision letter from Angela Foster stated that she was making two recommendations as "*an overall outcome to your grievance*" [241]. The first recommendation was that Paul Starkey and Glenn Sheldrake should attend a Line Manager Training course to refresh their managerial skills. The second recommendation was that she had concluded "*that there has been a breakdown in the relationship with yourself, Glenn and Paul therefore I would recommend that you all participate in some mediation as I do believe it could be beneficial to you all with a view to you at least being able to work alongside each other in a professional capacity without further conflict*". It was stated that this would "*in turn will help towards making your working environment a lot more tolerable and perhaps in time, enjoyable for you*".

235. On 11 April 2022, the Company advertised externally in relation to a vacancy for a Senior Coordinator Engineer [626]. The Claimant was not aware of the position until it was brought to her attention by a friend on 14 June 2022 [C92].

236. In her Statement of Evidence [C79], the Claimant refers to David Sanders having e-mailed her a reference on 19 April 2022 [871] which was very complimentary about her work. He was the former CAD department manager, who worked with the Claimant between September 2019 and March 2020. The e-mail began by saying "*see below as discussed*" from which it would appear likely that there had been some discussion with the Claimant as to the content of the e-mail. The content amounted to rather more than a reference in that David Sanders commented upon the Claimant's treatment during his time at the Company on the basis that "*I felt some things I witnessed during my time at GBL are relevant*". The e-mail stated that "*as I will expand on below, it was very evident that Marta speaking up and putting her points across with confidence were often not welcomed by certain members of staff at GBL, especially when failings were uncovered as a result*". In fact, the e-mail only expanded upon this to the extent of referring to one undated incident which was described (without reference to the name of the individual concerned) in the terms set out below.

"*One particular project saw Marta manage the closeout of the drawing package. This was a very challenging project with some members of staff acting very aggressively and sometimes in a sexist manner towards Marta. I recall finding it very difficult to hear when one member of staff quipped to Marta "go and make the tea" when he had clearly lost a debate with her due to his unprofessional demeanour prior to that point. I vividly recall this time as I was finding it tricky to navigate a situation where as a manager my instinct was to step in and protect members of the team, at the same time I wanted to allow Marta the space to confront the situation as an equal, rather than me take away that opportunity and potentially undermine her standing. Marta faced the situation down with incredible dignity and professionalism in a situation where I would not have blamed her had she allowed herself to stoop to the same level*".

237. In her Statement [C79], the Claimant refers to the reference having been provided "*following a catch up conversation where I explained to him my situation*". She also refers to an undated text message [625] from which it seems that the Claimant had told him that comments had been made to the effect that the Claimant was a bully. It seems likely that the Claimant was referring to interview comments

which had been made to Angela Foster in the course of the grievance investigation, which would have appeared in the evidence pack. In this context, David Sanders then commented in the text message that "*accusing an assertive and confident woman of being a bully is in itself sexist*" and describes the Company as allowing "*bullying to take place from male employees, such as Glen and Dean*". He then refers to an incident in which the Claimant was told to go and "*make the teas*" and identifies Dean (Robson) as the person who made the comment.

238. On 21 April 2022, the Claimant appealed against the grievance decision by way of a lengthy document into which she had cut and pasted various documents upon which she was relying [294-349].

239. On 22 April 2022 the Claimant had a meeting with Tom Delves by Skype to discuss the occupational health report and any actions to be taken arising from it [872-880]. The Claimant recorded the meeting so there is a transcript available of what was said, although the evidence of Tom Delves, which the Tribunal accepted, was that he had expressly not given consent to record the meeting which was specifically arranged so that the Claimant had a companion, Roberta Flexen, in attendance. During the meeting, Tom Delves made it plain, at least twice, that he would be providing a note, which would not be verbatim, summarising what had been said, but the Claimant had not indicated that the meeting was being recorded anyway.

240. The Claimant was critical during the meeting regarding the Company not having offered her support earlier with her mental health and not having organised the meeting to discuss the occupational health report sooner. In fact, an earlier meeting had been set up to discuss the occupational health report on 4 April 2022 the Claimant e-mailed at 1.18 pm on that date to say that she was taking the rest of the day off sick [853].

241. In the course of the meeting, the Claimant's companion, Roberta Flexen, sought reassurance that the occupational health recommendations were "*something think that the business will be taken seriously*" [873]. In replying, Tom Delves sought to stress the confidential nature of the report in that "*we... can't share the content of the report with the wider business cause it's private and confidential between Marta and sort of HR*". This prompted the Claimant to query, if the report was confidential between HR and herself, the reason for Remi Suzan having been aware of the report at the time of the flexible working appeal. This clearly put Tom Delves on the spot and he answered, assuming that the Claimant was correct by saying "*I don't, I mean how Remi knows, imagine it is probably come from Glenn or Paul*" [873]. This then prompted the Claimant to query the basis for Glenn Sheldrake and Paul Starkey being aware of the content of the report if they were not part of HR, to which Tom Delves replied that he had made them aware of the recommendations of the report, as they needed to be aware of the recommendations, but had not made them aware of the medical content of the report. The meeting then became rather sidetracked by the Claimant grilling Tom Delves as to the extent of any communication that he had had with Glenn Sheldrake and Paul Starkey with the information eventually extracted being to the effect that any communication had been by telephone but had not been in relation to the medical content of the report. He made it clear that the need for this arose

from the fact that "*if the business is going to agree for you temporary work from home, they have to know about that*" [873].

242. The Claimant was informed during the meeting that she would be allowed to work from home five days a week on a temporary basis whilst her grievance was resolved. As such, the Tribunal concluded that, prior to the meeting, the recommendations of the occupational health report must have been discussed sufficiently with Paul Starkey and Glenn Sheldrake in order for it to be agreed that the Claimant would work from home full-time on a temporary basis, for the reasons suggested in the report.

243. Unfortunately, as a result of an administrative mistake, an e-mail was sent out on 3 May 2022 [895] with a weekly rota [894] showing the Claimant as due to be attending the office on Monday, 9 May 2022. During this period, the team in which the Claimant was working was also working to a very tight deadline resulting in a group e-mail from Warren Mullem on 28 April 2022 saying that they would "need everyone pulling their weight and apologising in advance "*for the constant chasing and pestering I will be doing in the coming weeks*" [885].

244. The occupational health report had also suggested a review of the Claimant's workload. Following the meeting with the Claimant, Tom Delves spoke to the Paul Starkey, the Claimant's manager, who did not feel that her workload was excessive and was satisfied that it was commensurate with other members of the team [882 and TD9].

245. The position in respect of the Claimant's workload can also be seen from the discussion which took place with Paul Starkey and Glenn Sheldrake during the course of the grievance appeal investigation with a detailed explanation being provided regarding the work that the Claimant had been doing by way of outlining that the expectations be made of in terms of workload were not excessive [368 paragraphs 121 and 122]. Paul Starkey specifically referred to having "*spoken to the team, they don't believe workload is excessive and although she is learning in Revit we have provided her with other staff that she can go to and help with any other problems*" [368].

246. On 28 April 2022 the Claimant was sent an invitation to her grievance appeal hearing to take place on 3 May 2022. The Claimant replied on 29 April 2022 raising various issues about the process including that of the meeting not having taken place that week but being "*postponed*" until a week later [888]. It had also been explained that the meeting would be recorded which prompted the Claimant to ask (ironically, since she does not seem, herself, to have been in the habit of seeking permission before recording others at meetings) "*should I not be asked for permission for it to be recorded?*" Tom Delves replied on the same date [887] objecting to the comment that the Company had postponed the meeting and reiterating that the date and time for holding the meeting was down to the external consultants, Croner Face2Face, who were conducting the meeting.

247. In her Statement of Evidence, the Claimant complains about e-mails exchanged between Tom Delves and Angela Foster on 29 April 2022 which she describes as "*gossiping about me*" and not representing "*a supportive and understanding attitude*" [C84]. The relevant context is that, on this date, Tom

Delves had forwarded the Claimant's e-mail making a number of points about the appeal and his reply to Angela Foster. His e-mail directed Angela Foster to "see below from Marta S" and then added the words (in capitals) "*DEEP SIGH*" [887]. Angela Foster replied [886] saying "*I actually can't with her!!!*" This did not make complete sense and so prompted Tom Delves to e-mail asking her as to what "*do you mean?*". Angela Foster then replied saying "*I meant I can't take her attitude and moaning over every little detail*" [886]. Tom Delves replied, agreeing with Angela Foster and saying that "*everything that happens, she moans about the smallest inconsequential detail*".

248. Tom Delves also e-mailed the Claimant separately on 29 April 2022 [890] stating that Croner Face2Face had been informed that "*you wish to discuss your concerns regarding your flexible working appeal in the meeting also*". In her Statement of Evidence [C83], the Claimant complains that this did not happen. However, the reality was that she had already exhausted the appeal process in relation to that decision.

249. On 30 April 2022, the Claimant sent an e-mail to Warren Mullem which consisted of 42 questions [891-892]. Warren Mullem replied on 2 May 2022 answering most of the questions [891-892] but ignoring some "*as it's specific to me and you wouldn't know this unless it came from me which would put me in a very difficult decision*" [891]. Question 5 asked Warren Mullem if he had ever heard the Claimant shouting at other people in the office to which he answered that "*I haven't witnessed shouting, maybe just the raised voices here and there (between both parties)*". Question 32 asked if he had ever heard Paul Starkey saying to anyone in the office "*it is what it is, if you don't like it leave*". Warren Mullem simply answered that "*I have*". In her Statement of Evidence [C49], the Claimant sought to make the point that this was contrary to the Grounds of Resistance where the First Respondent denied that Paul Starkey told the Claimant on numerous occasions that "*it is what it is, and if you don't like it, leave*". However, the question asked of Warren Mullem had simply been whether he had heard the Claimant saying this "to anyone". The wide scope of the question and the open-ended answer rather suggests that Paul Starkey had a propensity, as a manager, to make comments such as this to members of staff generally.

250. In the list of questions, the Claimant also asked Warren Mullem about the "*milk incident*" [892] and asked if he remembered the Claimant being really distressed after being told by Paul Starkey that she needed to stay in the meeting. Warren Mullem replied that as "*I was in the office, yes I was aware*" but *"I don't believe Paul would have been aware though, if I'm honest as he was not in the office*". When asked about Bhupinder Padda sitting facing the Claimant during the meeting, Warren Mullem replied that Bhupinder Padda "*was sitting local to you, I don't believe the desks faced*". When asked as to whether he recalled the Claimant telling him, while still in the meeting, that she had asked Bhupinder Padda as well and shown him the milk stains on her t-shirt and he had said that the Claimant could not leave the meeting, Warren Mullem replied that "*you had brought to my attention that you had asked Bhupinder and he said he couldn't leave the meeting*" but he added "*I wasn't aware of everything at the time until you had told me*".

251. The Claimant attended investigation meetings in relation to her grievance appeal on 3 and 4 May 2022 [C85]. The meetings were conducted by an external consultant, Sharlene Browne.

252. In the event, Sharlene Browne became unavailable to continue with the grievance appeal and Carl Tudor, a Croner Face2Face Consultancy Team Leader took over as the consultant conducting the process, with the Claimant being notified of this on 16 May 2022 [890].

253. On 10 May 2022 the Claimant had been signed off work again by her GP until 20 May 2022 with the reason given as stress at work. On Monday 23 May 2022 this was extended by the Claimant's GP for another two weeks until 6 June 2022.

254. The Claimant's Statement of Evidence [C86] refers to Carl Tudor having telephoned the Claimant on 17 May 2022 and stated that the Company would "*prefer to offer me an exit package and that if I didn't accept the offer, they could dismiss me without compensation based on the working relationship being broken*". The conversation was described by Carl Tudor in an e-mail sent to Tom Delves and Angela Foster on 17 May 2022 [936] in which he stated that "*I had a long conversation with Marta about what she wanted and moving things forward*" but she "*would not be interested in a settlement*". He stated that "*I've planted a seed in that an Employer can dismiss if they deem the working relationship is irretrievable which seemed to shock her*".

255. Angela Foster would appear to have spoken to David Gratte whose position was that "*he'd like the grievance concluded*" [933]. She replied to Carl Tudor on 18 May 2022 [935] stating that, taken "into account what you've told us about Marta not wishing to settle, we would likely to go ahead and close out the grievance". She added that once "*that has been concluded we can re-visit how she will exit the business*". She sought confirmation as to whether Carl Tudor had asked as to "*what she does actually want as an outcome?*".

256. Carl Tudor replied later that day [935] stating that the Claimant had stated that she wanted (1) an apology, (2) her role back "*due to her belief she has been demoted*", (3) the "*aggressors moved*", or (4) "*a different role but without suffering a detriment to salary etc*".

257. Carl Tudor duly went ahead with the grievance appeal and conducted investigation meetings with Glenn Sheldrake, Paul Starkey, Bhupinder Padda and Angela Foster (with Tom Delves at the same time).

258. When interviewed, Paul Starkey described his working relationship with the Claimant [442] in the terms set out below.

> "*I mean generally with Marta her - the e-mail and phone communication to myself and Glenn can be quite aggressive, blunt and possibly rude, in all honesty, which makes managing her difficult and it becomes very confrontational. And it tends to get more aggressive if things aren't going her way or she disagrees, and there's an element, I believe, of twisting words and interpretations to suit herself*".

259. During the interview, Paul Starkey was asked about his previous comments, when interviewed as part of the grievance investigation by Angela Foster, that "*to become Senior Engineer she would need to be in the role for around 10 years*". He provided the clarification [439] set out below.

"*Yeah, I think the ten years has come out of my meeting with HR on the earlier grievance review. It's not a ten-year thing, it's a skillset thing, skillset develops over time, some people could be promoted in ten years, some people may never get there, you know? It's, promotions are based upon skillset, not time served, skillset develops over time and that's it, isn't it? It's not a, all of a sudden you've done ten years, happy days, you're going to get a promotion*".

260. Paul Starkey went on to say that "*she's not up for promotion anyway, she was only promoted to Coordinating Engineer in 2017 and I don't think at the moment she has the skillset to be a senior engineer anyway*" [439].

261. Paul Starkey described the conversation with the Claimant's husband about bonuses [448] in the terms set out below.

"*So, I know Paul quite well, we've worked together for 18 years and before the current grievance issues Paul and I would have a lot of general conversations about this and that. The context of this conversation needs to be taken into account because as far as I recall it went something like this. Paul asked me if Gratte Brothers staff, who were on furlough, had received a bonus, to which I replied yes, as far as I know. Paul Bowcock was quite shocked at that saying why were people on furlough getting a bonus when they were sitting around doing nothing and everyone else was working really hard? To which I replied tongue-in-cheek that maybe people on furlough may well be moaning that he had the bonus twice*".

262. When interviewed, Bhupinder Padda was asked about the meeting where the Claimant had asked to leave [453]. He described events in the terms set out below.

"*BP: Yeah, I think it was the first second model review meeting we had, which she was involved in. She said to me, "Can I leave?" and I said, "Well, just wait until I finish, I'll be finished in five minutes." I had no idea she wanted to express and I'm not (? 10.52) like that. She said in the meeting, "Can we go?" And Paul said, "No, just wait, we're nearly done." So, we were on the meeting for maybe two – two-and-a-half hours, I wasn't aware that she had to express. So, yes, that did happen and I did say to her you have to stay on the meeting until it finishes, because you wouldn't walk out on a meeting if it was a face-to-face meeting, unless you really had to, but I wasn't aware why she had to. For her it was an education thing because she just started the job and I wanted her to listen to everybody else who was presenting the model. From that respect I said no, don't leave, because you might learn something about the areas that you're working in, which might aid you in your coordinatio*n".

263. Bhupinder Padda was also asked about the occasion when arrangements were made to go out for drinks with David Hinds while he was on furlough. His answer was that he was not invited or made aware of the drinks evening either.

264. On 8 June 2022, the Claimant commenced proceedings in the Employment Tribunal by filing her ET1 Form of Claim with the Tribunal. Notice of the Claim was only sent (by the Tribunal) by post to the Company, as the Respondent, on 7 July 2022, so that the ET1 Form of Claim would have been received shortly after this date.

265. On 9 June 2022, Tom Delves wrote to the Claimant [1153] attaching a copy of the grievance appeal report prepared by Carl Tudor which was dated 8 June 2022. He noted that the recommendation of the report was that the Claimant's grievance appeal should be dismissed in its entirety for the reasons explained in the report. He confirmed that the Company had accepted the findings of the report and its recommendations. The report included a recommendation as to mediation, as set out below.

"*Whilst the Grievance Appeal is not upheld, it is noted that there is damage to employer/employee relationship and that this is causing disturbance to the workplace. It is recommended that consideration be given to taking part in workplace mediation in order to build a professional workable relationship between both parties*" [371].

266. On 8 July 2022, Angela Foster wrote to the Claimant [480] informing her that, further *"to your e-mail of 8 July to Henry O'Carroll of ACAS, you are now effectively suspended from your employment pending investigations into the breakdown of the employer/employee relationship*". In her Statement of Evidence [C94], the Claimant stated that her e-mail to ACAS had been sent on a without prejudice basis.

267. The suspension was on full pay, and the Claimant was told that she would be contacted the following week by Croner Face2Face regarding the investigation which would now take place. The letter stated that whilst "*suspended you shall not enter Company premises nor should you make contact with any member of the Company's staff, customers, clients or agents without permission from myself or a more senior manager*". It was further stated that failure "*to comply with this instruction will be regarded as an act of Gross Misconduct and may result in disciplinary action*". The letter told the Claimant that if she had any questions, she should contact Angela Foster.

268. When cross-examined about the reason for suspending the Claimant, Angela Foster agreed that the suspension letter was poorly worded. In her evidence, which the Tribunal accepted, she explained that the decision was made as the Claimant had rejected a possible settlement and working relationships were still in a state of disrepair so they needed to find a solution before the Claimant came back to work, noting that (with the grievance appeal having concluded) the Claimant was due to be coming back to work on the basis of attending the office three times per week.

269. On 11 July 2022, as a result of being suspended, the Claimant lodged a further grievance [485] complaining that her suspension amounted to victimisation. She alleged that she was being victimised after raising a grievance complaining of discrimination.

270. On 13 July 2022 the Claimant attended an investigatory interview with Kerry Tipple from Croner Face2Face who was carrying out the investigation into the breakdown of the employer/employee relationship.

271. During the investigation meeting, the Claimant was asked about the breakdown in relationship with certain members of the team, in particular Glenn Sheldrake and Paul Starkey [996]. She was asked if "*you have said you can't work with these particular people, is that right?*" She was further asked "*can you continue to work with them?*" She was also asked whether "*you feel that there is a relationship breakdown?*" She replied to this by asking how "*is that relevant to me being accused of breaking the relationship with them?*". Obviously, the alleged breakdown in working relationship had not resulted in Glenn Sheldrake or Paul Starkey being suspended or subjected to an investigation. However, the reality is that they were the senior managers within the department.

272. The investigation report suggests that Kerry Tipple "*struggled to get a clear answer*" from the Claimant as to whether "*she felt the relationship was damaged and whether she would be willing to engage in options to attempt to resolve it*" [495]. At one point the Claimant was asked whether, "*as things are at the moment, can you work with Glenn and Paul?*" The Claimant replied that "*I would rather not answer to that question*" [511].

273. The Claimant was asked about whether or not she would be willing to participate in mediation so as to seek to mend her working relationship with Glenn Sheldrake and Paul Starkey, with it being made clear that participation in mediation was voluntary. At times her answers to this issue could be described as ambiguous or qualified or non-committal. The closest to a clear answer was when the Claimant was asked if "that is something that you would be willing to (do)" and she replied that "*I'm willing to cooperate, always*" [514]. At this point, she also referred to there being other options, and was asked as to what she saw as the other options and replied "*for me the options are, after this process I go back to work* … (or) *if they don't want me to go back to work, they can dismiss me, as Carl Tudor told me that they would do, potentially, or if my mental health keeps being damaged and damaged, then I maybe see myself in a situation where I can't continue in this any longer, being victimised on top of everything, I might need to resign, add the constructive dismissal into a claim , because this would be the final straw*" [514]. She continued by saying that "*all of these months going through this exhausting and really damaging for my mental health process, it has … caused quite a really big impact, and yeah, I don't think this is making me any better, so … it might be that I need to resign*" [514].

274. The Claimant continued by suggesting that "*the fact that they are not investigating my … grievance for victimisation, and they are taking this meeting ahead before investigating the victimisation claim, it's already shown that they've got their decision made, because this is a further act of victimisation, and them*

choosing to take this meeting ahead over investigating the grievance for victimisation is showing in itself that they have made a decision already" [514].

275. In fact, subsequent events suggested that this was not the case in that the Company instigated an investigation into the Claimant's victimisation grievance before the investigation into the possible breakdown of the employer / employee relationship had concluded and ultimately the investigation into the breakdown of the employer / employee relationship concluded that it was not appropriate to embark upon the process by which termination of employment might be an option and recommended mediation instead.

276. When later interviewed by Mark Silvey as part of the investigation into her victimisation grievance, the Claimant was relying upon two pieces of evidence in support of her argument that she was being subjected to victimisation, namely, first, the suspension letter, and, second, what had been said by Kerry Tipple in the investigation interview, which the Claimant was interpreting as being to the effect that she had been suspended for bringing proceedings in the Employment Tribunal. However, the Tribunal is satisfied that this is not the correct interpretation of the passage to which the Claimant was referring. The Claimant was asking as to the reason for her suspension. Perhaps unwisely (given that the reason for the suspension was explained in the suspension letter and Kerry Tipple was not the decision-maker but a third party), Kerry Tipple sought to paraphrase the reason for the Claimant's suspension as being that there are "*some serious concerns with your relationship with the business*". This was shortly after making the point that the fact that the Claimant had brought Tribunal proceedings "*would indicate that you've got some concerns with your employment*" [504]. She then linked the two sets of circumstances by saying "*so if you feel that there are concerns to such a degree that you need to … raise a Tribunal claim, then presumably, there* (are) *some serious concerns with your relationship with the business*". This was the passage from the interview which the Claimant played to Mark Silvey during the later victimisation grievance investigation [542]. The playback was initially stopped at this point. What was not played was the very next part of the interview where the Claimant specifically asked if "*the fact that I have been suspended is because I have* (taken) *them to a Tribunal?*". Kerry Tipple answered in the negative, then stated that "*you've been suspended on the basis that they want to investigate the concerns that you've raised*", which again involved paraphrasing the actual reason, which had already been given the suspension letter. The simple fact was that the Claimant's concerns were indicative of a possible breakdown in the employment relationship. Strictly speaking, these were not the concerns being investigated. These concerns had already been investigated by way of the grievance investigation. It was the extent of any breakdown of the employment relationship which has been investigated; one aspect of which might be that of the reasons for the breakdown. This was the point made by Mark Silvey in his report in that he stated that "*it could be that the* (Croner) *Consultant was explaining that the Tribunal Claim was an indication of MS's concerns and potential breakdown of the relationship*" [544].

277. Following the investigation meeting with Kerry Tipple, the Claimant had e-mailed Angela Foster stating that she wished to reiterate her grievance complaining about victimisation stated that, during the investigation meeting, she

had been made aware "*that the reason for* (being) *suspended from work is for raising my complaint to the Employment Tribunal and that action is being considered by the Company as the breach of trust*" [523].

278. Angela Foster forwarded the Claimant's e-mail of 13 July 2022 [1160] to Kerry Tipple stating that the Claimant "*clearly did not understand that she has been suspended from work not because of her tribunal claim but because of the ongoing breakdown in the relationship because she had refused the offer of settlement*" [1160]. She was proposing to send the Claimant an e-mail to the effect that the suspension was not to do with the Tribunal claim.

279. The Statement of Evidence of Angela Foster (AF12] makes it clear that the decision to suspend the Claimant had been made without the knowledge that she had now commenced Employment Tribunal proceedings. This is clear from the chronology of events described when Angela Foster was interviewed by Mark Silvey for the purposes of the victimisation grievance investigation [542]. The e-mail was received from ACAS on 8 July 2022 at 11.01 am to the effect that the Claimant had declined the settlement offer which had been made. Angela Foster stated to Mark Silvey that we "*felt that until we could find a workable resolution, that suspending Marta would be a reasonable action due to the fact that Marta still felt as though she had been treated poorly by her managers even though two investigations dismissed those allegations entirely, we did not want to put Marta back in a situation that might cause her further distress*". The suspension letter was then e-mailed to the Claimant at 14.55 pm on 8 July 2022. At 15.30 pm on 8 July 2022, Tom Delves e-mailed Angela Foster to request that she collect a letter from the accounts department of the Company. Angela Foster then went to collect the letter after 4.00 pm. This was the letter giving notice of the Tribunal Claim. The suspension letter had already been drafted and sent.

280. The Claimant's grievance complaining of victimisation was also handled by Croner Face2Face resulting in a consultant from Croner, Mark Silvey, conducting an investigation. The Claimant attended a grievance meeting with Mark Silvey on 19 July 2022.

281. On 22 July 2022 Angela Foster wrote to the Claimant [567] attaching the report completed by Mark Silvey. The letter stated that, having concluded the investigation, Mark Silvey had given his decision which was not to uphold the Claimant's grievance. The letter informed the Claimant of her right of appeal, with any appeal to be submitted within five working days of the receipt of the letter.

282. The executive summary to the report confirmed that the Claimant's complaint of victimisation was not upheld with the reasoning being summarised as that the Claimant "*has misunderstood or mis-read elements of her suspension letter*" and the employer "*was reasonable in suspending*" [538].

283. However, the report also included recommendations. The report stated that, whilst the grievance was not upheld "*it is noted that there is damage to employer/employee relationship and that this is causing disturbance to the workplace*". It was stated that it "*is recommended that consideration be given to taking part in workplace mediation in order to build a professional workable relationship between both parties*" [545].

284. It transpires that, by 22 July 2022, the investigation into the breakdown of the employer / employee relationship had also concluded and Kerry Tipple had prepared a report dated 22 July 2022 [491], the outcome of which was that Kerry Tipple recommended that there was no case to answer and that the matter should not proceed to a disciplinary hearing [492]. The report provided a summary of findings as set out below.

"*Having investigated this matter and impartially considered the available evidence, it is recommended that there should be no further action in relation to the concerns raised.*

KT finds that reading between the lines, MS appears to be willing to engage in options to resolve the issues going forward. At this point in time Mediation has not been attempted, training is yet to be carried out and MS is not working her full three days in the office in order to establish where any conflicts may occur.

KT recommends that the employer agree a date for MS to return to the office three days per week and then arrange a Mediation session between MS, Glenn and Paul to explore their relationship and ways in which they can work comfortably together moving forward.

KT is clear that the Mediation session is voluntary and neither party are forced to attend. It is recommended however, that every attempt is made to carry out this Mediation prior to MS's return to the office on her full three days.

KT does not find that there is a case to answer at disciplinary for the alleged concern and remains optimistic that matters can be resolved, however in the event that these attempts fail, the employer may need to consider whether a formal approach is necessary in the circumstances".

285. At this stage, the suspension of the Claimant was not lifted. The Claimant has complained retrospectively about this. However, the provision of the report was not, in itself, the end of the process for the duration of which the Claimant had been suspended. The Company still needed to decide whether or not to accept the recommendations made in the report. A key part of the rationale of the report was that the issues which existed in the relationship between the Claimant and Glenn Sheldrake and Paul Starkey might be capable of resolution by mediation. It was recommended mediation take place before the Claimant returned to working in the office. It had previously been agreed that she could work from home whilst her original grievance was resolved, but that had now been resolved in so far as the Claimant had been notified on 9 June 2022 that the Company had accepted the recommendation of Carl Tudor to dismiss the appeal in its entirety. It seems that the Company had delayed having the Claimant revert back to working in the office whilst it explored the possibility of a negotiated outcome which had not provided a resolution. The report of Kerry Tipple now recommended that a disciplinary process was not an appropriate resolution. Clearly, in deciding whether to accept the recommendation of that report, the Company would need to give some consideration to the way forward.

286. A material consideration which was taken into account, as Angela Foster makes clear in her Statement of Evidence [AF13] was that the Claimant had been suggesting that her circumstances at work, and the difficulties involved in the working relationship with Glenn Sheldrake and Paul Starkey, were having a detrimental impact upon her mental health. Thus, Angela Foster states that the Claimant's mental health was taken into account in not lifting the suspension immediately [AF13]. Clearly, the recommendation that the possibility of mediation be explored had been made by three separate consultants from Croner. Additionally, the advice of Croner was not to lift the suspension before mediation was arranged and in place so that the Claimant would not be caused any further undue stress or anxiety. It was considered that it would benefit the Claimant to go through the mediation process before returning to work.

287. On Wednesday, 27 July 2022, Angela Foster e-mailed the Claimant a letter [151] in the terms set out below.

"*Following on from the investigation outcome which was sent to* (you) *last Friday, could you please complete and return the attached Mediation Consent form ASAP so that we can get the mediation session booked in.*

It is our understanding that you stated you are happy to participate in the mediation process, if you have any queries please let me know. Could you please return this form by COB on Friday".

288. Although mediation had been the recommendation of the grievance investigation report, asking the Claimant to consent to mediation did not stop her appealing. Although she had been asked to return the mediation consent form as soon as possible, no deadline had been placed on this. It had been made clear to the Claimant that participation in mediation is voluntary. The very act of asking her for her consent served to reiterate this. It was still open to her to appeal the decision not upholding her grievance. Her grievance appeal could have proceeded at the same time as mediation. Alternatively, she could have replied to the request for her consent by stating that she did not want to consider or consent to mediation until any appeal had been resolved. It was clearly open to her not to consent to mediation. Finally, it had been made clear to her that she had a right of appeal so that it was still open to exercise that right of appeal by appealing.

289. However, on the same date, 27 July 2022, the Claimant resigned with immediate effect. Her Statement of Evidence [C102] states that she did so "*based on the last straw doctrine*". The material parts of her resignation letter in the terms set out below.

"*I am writing to inform you that I am resigning from my position of Coordinating Engineer with immediate effect. Please accept this as my formal letter of resignation and a termination of our contract. I feel that I am left with no choice but to resign in light of my recent experiences regarding the harassment and discrimination, and most recently the Victimisation received from the Organisation.*

The main reasons are stated below.

a. A fundamental breach of contract; I have been discriminated against because of my age and sex. The Company has decided not to investigate some of the allegations and concerns I have raised.

I have raised concerns about the distress that all of this was causing me mentally for years to the HR department and nothing has been done about it, not complying with their duty of care towards me.

After I have raised a Grievance Complaint for the discrimination, I have been Victimised.

Today's e-mail (27th July 2022) from Angela Foster, stating:

'Following on from the investigation outcome which was sent to last Friday, could you please complete and return the attached Mediation Consent form ASAP so that we can get the mediation session booked in'.

clearly shows a breach on the Company Grievance's procedure as well as in the ACAS code of practice. I have the right to appeal the outcome of the Grievance within 5 days, which I was intending to do, however, I have been asked to attend the mediation before giving me the chance, and the right, to appeal within that time frame.

b. Anticipated breach of contract and Breach of trust and confidence; The Company has decided to suspend me from work and not allow me access to any of my belongings/correspondence at work for over a month without a valid reason, and without previous warning. I have made the Company aware of how humiliated I was feeling about this decision and nothing has been done about it, other than raise a procedure against me.

The Company has expressed their intention of (raising) *a disciplinary procedure against myself and potentially dismiss me from work.*

There has been a smear campaign towards me that damages your (sic) reputation and/or my career prospects.

c. Last straw doctrine; Although the mediation is now on the table, based on the way that the consultants from Croner Face2Face have been performing the investigations so far, I have no trust that the mediation will be conducted in an impartial way or even if the consultant will be qualified to conduct the mediation.

I have been suspended for no valid reason and now denied the right of appealing the grievance. I consider this to be a fundamental and unreasonable breach of the contract on your part. I will do my very best to ensure a smooth transition upon my departure and make sure that all the details/information is left available to the person who takes up my position following my departure.

As stated above, Gratte Brothers has acted in breach of contract on numerous occasions in the past, and although I waived the breach in the past, I am no longer willing to do so as my mental health keeps being severely damaged.

I have suffered considerable detriment due to my recent treatment by Gratte Brothers to my health, well being, and ultimately to my career. I am an honourable and well respected professional. I have raised concerns about discrimination and I have been ignored. I have been undermined, belittled and ultimately isolated and have suffered both mentally and physically as a result. I have been left with no option but to resign from my role".

290. By letter dated 29 July 2022 [574], Angela Foster replied to the Claimant's resignation letter, effectively treating the matters raised in the resignation letter as a grievance, so that the Claimant was invited to attend a grievance meeting on 4 August 2022 which would be conducted by an independent consultant. However, the letter then referred to the Claimant's suspension and the investigation into the alleged breakdown of the employment relationship and effectively informed the Claimant that the investigation had been completed with the Company accepting the recommendation of the investigation report dated 22 July 2022 so that it had been decided to take no formal disciplinary action against the Claimant and to lift the suspension. Angela Foster cut and pasted into the letter the summary of findings from the beginning of the report (previously also quoted above).

291. Having notified the Claimant of the conclusion and outcome of the investigation, the letter of Angela Foster continued in the terms set out below.

"*I am concerned that you may have made a hasty decision in resigning from your employment, due to receiving the mediation consent form, a process which was discussed with you during the investigation meeting with KT. I am prepared to accept your resignation. However, should you feel that you have made a hasty decision in resigning, I would be prepared to consider allowing you to withdraw your resignation. If this is the case, please do not hesitate to contact me.*

In the event you choose to withdraw your resignation, your return to work date would be Monday 1 August 2022. Your working arrangement will be to work from home for 2 days and from the office 3 days week (usual working hours of 08.30-5.00).

The next steps as indicated by the investigation report is to commence the mediation process. This will be arranged upon receipt of your consent to this process, and as per your request we can accommodate for this to be carried out remotely for you. Please can I ask that you complete and return your consent form to me as soon as possible, so that we are able to move forward with the arrangements for mediation.

The Company appreciates that the events to date may have caused you concern and that there will be a transition period to support you back to work, therefore from 1 August 2022, you are able to continue to work from home, until the conclusion of

the mediation process. I welcome the opportunity to have a welfare and work task discussion with you on Monday 1 August 2022 prior to you starting work.

On a separate note, I can confirm that you do have the right to raise your grievance appeal associated to the grievance hearing which took place on 19 July 2022, and as indicated in your outcome letter, the timeframe for submitting this is by COB 29 July 2022".

292. The final paragraph of the letter stated that, should the Claimant have any queries, or if she wished to discuss the letter of Angela Foster, she should feel free to contact her.

293. The Claimant replied to the letter on 1 August 2022. Ultimately, she did not withdraw her resignation. There was further correspondence regarding dealing with any grievance, although the Claimant made it clear that her resignation letter was not a grievance but a resignation and that if the Company wanted to investigate the matters set out in the letter, then they should conduct any process by e-mail as she was under no obligation to attend any meetings. The grievance was subsequently dismissed.

294. The Claimant started a new job started a new job on 1 September 2022 on a similar salary [105].

Relevant law

Constructive dismissal

295. Section 95(1)(c) of the Employment Rights Act 1996 ("ERA 1996") provides that an employee is dismissed where the employee terminates the contract of employment "*with or without notice in circumstances in which he is entitled to terminate the contract without notice by reason of the employer's conduct*".

296. This is a constructive dismissal in which an employee is entitled to resign where the employer is in fundamental breach of the contract of employment and the employee's resignation will be treated as amounting to a dismissal by the employer.

297. In *Western Excavating v Sharp [1978] 1 All ER 713, CA*, it was explained that a fundamental breach of contract occurs where the employer commits a significant breach, which goes to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more the central terms of that contract. In such a case the employee is entitled to treat himself or herself as discharged from any further performance and resign. In legal terms, this is referred to as a repudiatory breach of the contract of employment. This test as to whether there has been a repudiatory breach of the contract of employment by the employer is an objective test. It is not sufficient that the employee subjectively perceives that there has been such a breach is a fundamental breach. However, it was also made clear that an employee relying on a breach of contract in this way must make up his or her mind and resign soon after the breach, or otherwise it may be held that the employee has waived his or her right to treat the contract as having been terminated by the employer's repudiatory breach of contract and has

effectively affirmed the contract. The burden is on the employee to show that a dismissal has occurred.

298. A constructive dismissal may result from a breach of an express term, such as the rate of pay stipulated in the contract, or from a breach of an implied term in the contract of employment, such as the implied term of trust and confidence. The implied term of trust and confidence was defined by the House of Lords in *Malik v Bank of Credit [1998] AC 20, HL*, as being to the effect that the employer shall not "*without reasonable and proper cause, conduct itself in a matter calculated (or) likely to destroy or seriously damage the relationship of confidence and trust between employer and employee*".

299. A constructive dismissal may result from either a single act, or from the cumulative effect of a series of acts. Where it is based on the cumulative effect of a series of acts, the last act, often referred to as the last straw, need not be a breach of contract in itself, but it must be capable of contributing something to the cumulative breach of contract, as explained by Dyson LJ in *London Borough of Waltham Forest v Omilaju [2005] All ER 75, CA*, as set out below.

300. "*I see no need to characterise the final straw as unreasonable or blameworthy conduct. It may be true that an act which is the last in a series of acts which, taken together, amounts to a breach of the implied term of trust and confidence will usually be unreasonable and perhaps even blameworthy. But, viewed in isolation the final straw may not always be unreasonable, still less blameworthy. Nor do I see why it should be. The only question is whether the final straw is the last in a series of acts or incidents which cumulatively amount to a repudiation of the contract by the employer. The last straw must contribute, however, slightly to the breach of the implied term of trust and confidence. Some unreasonable behaviour may be so unrelated to the obligation of trust and confidence that it lacks the essential quality to which I have referred*".

301. In *Kaur v Leeds Teaching Hospitals NHS Trust [2019] ICR 1, CA*, it was confirmed that, when resigning and claiming to have been constructively dismissed, an employee who is the victim of a continuing cumulative breach of the implied term of trust and confidence is entitled to rely on the totality of the employer's acts notwithstanding a prior affirmation, provided the later act forms part of the series (see paragraph 51).

302. If the employee's resignation is found to amount to a constructive dismissal, the Tribunal will still need to consider whether or not the dismissal was fair in accordance with the provisions of ERA 1996 section 98.

303. ERA 1996 section 98 specifies potentially fair reasons as being those relating to capability (by reference to health or qualifications), conduct, redundancy or a legal requirement, as well as "*some other substantial reason*" ("SOSR") "*of a kind such as to justify the dismissal of an employee holding the position which the employee held*". ERA 1996 section 98(4) provides that where an employer has proven that the dismissal was for a potentially fair reason, then the determination of whether the dismissal is fair or unfair depends on whether in the circumstances the employer acted reasonably or unreasonably in treating the reason as a sufficient reason for dismissing the employee. Such an issue all shall be

determined by the Tribunal in accordance with equity and the substantial merits of the case. A Tribunal is to consider the reasons shown by the employer and the size and administrative resources of the employer's undertaking. The employer must establish the reason for the dismissal and it is for the Tribunal to determine the actual reason and whether the dismissal was fair and reasonable.

304. In *De Lacey v Wechseln Limited [2021] IRLR 547, EAT*, it was held that a "last straw" constructive dismissal might amount to unlawful discrimination if some of the matters relied on, though not the last straw itself, were acts of discrimination. Where there is a range of matters that, taken together, amount to a constructive dismissal, some of which matters consist of discrimination and some of which do not, the question is whether the discriminatory matters sufficiently influenced the overall repudiatory breach so as to render the constructive dismissal discriminatory. In other words, it is a matter of degree whether discriminatory contributing factors render the constructive dismissal discriminatory. There could be cases in which the constructive dismissal was discriminatory, even though the last straw was not. A discrimination Claim arising out of a constructive dismissal might be timeous even if the discriminatory events were out of time. The Employment Appeal Tribunal explained that this was because time would run from the date of the dismissal, as set out below.

"*Second, in my judgment, it is clear that, in a discriminatory constructive dismissal, time runs for the claim from the date of the acceptance of the repudiatory breach, not from the date or dates of the discriminatory events, if earlier …. It follows that a discrimination claim arising out of a constructive dismissal may be in time even if the discriminatory events that render the dismissal discriminatory are themselves out of time. It follows in turn that the fact that the incidents in allegations 7 i and 11 v were out of time for the purposes of a free-standing discrimination claim, or for a "discriminatory course of conduct" claim, does not mean that they should be disregarded for the purposes of a discriminatory constructive dismissal claim*".

Wrongful dismissal / notice pay

305. An employer will be in breach of contract if the employer terminates an employee's contract without the contractual notice to which the employee is entitled, or a payment in lieu of that notice, unless the employee has committed a fundamental breach of contract which would entitle the employer to dismiss without notice.

Flexible working

306. The provisions in the ERA 1996 in relation to flexible working have subsequently been amended with effect from 6 April 2024. Accordingly, the relevant provisions which applied at the time of the Claimant's employment are those that were in place before 6 April 2024.

307. ERA 1996 section 80F dealt with the statutory right to request the variation to the contract of employment to provide for flexible working, as set out below.

"*(1) A qualifying employee may apply to his employer for a change in his terms and conditions of employment if —*
(a) the change relates to —
(i) the hours he is required to work,
(ii) the times when he is required to work,
(iii) where, as between his home and a place of business of his employer, he is required to work, or
(iv) such other aspect of his terms and conditions of employment as the Secretary of State may specify by regulations.
(2) An application under this section must —
(a) state that it is such an application,
(b) specify the change applied for and the date on which it is proposed the change should become effective".

308. ERA 1996 section 80G included the provisions set out below dealing with employer's duties in relation to application under ERA 1996 section 80F.

"*(1) An employer to whom an application under section 80F is made —*
(a) shall deal with the application in a reasonable manner,
(aa) shall notify the employee of the decision on the application within the decision period, and
(b) shall only refuse the application because he considers that one or more of the following grounds applies —
(i) the burden of additional costs,
(ii) detrimental effect on ability to meet customer demand,
(iii) inability to re-organise work among existing staff,
(iv) inability to recruit additional staff,
(v) detrimental impact on quality,
(vi) detrimental impact on performance,
(vii) insufficiency of work during the periods the employee proposes to work,
(viii) planned structural changes, and
(ix) such other grounds as the Secretary of State may specify by regulations.
(1A) If an employer allows an employee to appeal a decision to reject an application, the reference in subsection (1)(aa) to the decision on the application is a reference to —
(a) the decision on the appeal, or
(b) if more than one appeal is allowed, the decision on the final appeal.
(1B) For the purposes of subsection (1)(aa) the decision period applicable to an employee's application under section 80F is —
(a) the period of three months beginning with the date on which the application is made, or
(b) such longer period as may be agreed by the employer and the employee...".

309. The relevant parts of ERA 1996 section 80H which dealt with complaints to Employment Tribunals as set out below.

"*(1) An employee who makes an application under section 80F may present a complaint to an employment tribunal —*

(a) that his employer has failed in relation to the application to comply with section 80G(1),
(b) that a decision by his employer to reject the application was based on incorrect facts, or
(c) that the employer's notification under section 80G(1D) was given in circumstances that did not satisfy one of the requirements in section 80G(1D)(a) and (b)….
(3A) If an employer allows an employee to appeal a decision to reject an application, a reference in other subsections of this section to the decision on the application is a reference to the decision on the appeal or, if more than one appeal is allowed, the decision on the final appeal….
(5) An employment tribunal shall not consider a complaint under this section unless it is presented—
(a) before the end of the period of three months beginning with the relevant date, or
(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
(6) In subsection (5)(a), the reference to the relevant date is a reference to the first date on which the employee may make a complaint under subsection (1)(a), (b) or (c), as the case may be.
(7) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (5)(a)".

310. The provisions of the ACAS Code of Practice (Handling in a Reasonable Manner Requests to Work Flexibly), as published in 2014, which were applicable at the time included the paragraphs set out below.

"*2. The guidance in this Code, as well as helping employers, will also be taken into account by employment tribunals when considering relevant cases….*

8. You should consider the request carefully looking at the benefits of the requested changes in working conditions for the employee and your business and weighing these against any adverse business impact of implementing the changes, see paragraph 11. In considering the request you must not discriminate unlawfully against the employee.

9. Once you have made your decision you must inform the employee of that decision as soon as possible. You should do this in writing as this can help avoid future confusion on what was decided.

10. If you accept the employee's request, or accept it with modifications, you should discuss with the employee how and when the changes might best be implemented.

12. If you reject the request you should allow your employee to appeal the decision. It can be helpful to allow an employee to speak with you about your decision as this may reveal new information or an omission in following a reasonable procedure when considering the application.

*13 The law requires that all requests, including any appeals, must be considered and decided on within a period of three months from first receipt, unless you agree to extend this period with the employe*e".

311. In *Singh v Pennine Care NHS Foundation Trust [2016] UKEAT/0027/16/DA*, the Employment Appeal Tribunal held that it is not for an Employment Tribunal to judge the reasonableness of an employer's refusal to provide flexible working in a Claim relating to ERA 1996 section 80H(1)(b). It simply needs to investigate the facts on which the decision was based.

Direct discrimination

312. Equality Act 2010 section 13 provides that a "*person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others*".

313. Thus, direct discrimination takes place where a Claimant is treated less favourably, because of the relevant protected characteristic, than the employer treats or would treat others. This can involve comparing the treatment of a Claimant with that received by an actual comparator, or comparing the Claimant's treatment with that which would have been received by a hypothetical comparator.

314. Where the relevant protected characteristic is age, direct discrimination may not be unlawful if the Respondent succeeds with a defence of justification, in respect of which Equality Act 2010 section 13(2) is in the terms set out below.

"*If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim*".

315. Section 23(1) of the Equality Act 2010 provides that on a comparison for the purpose of establishing direct discrimination there must be "*no material difference between the circumstances relating to each case*". In the case of *Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337, HL*, Lord Scott explained that this means that "*the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class*".

316. It is not a requirement that the situations have to be precisely the same. The existence of a different decision maker does not prevent the comparison being a valid one (see *Olalekan v Serco Limited [2019] IRLR 314*).

317. In *JP Morgan Limited v Chweidan [2012] ICR 268*, Elias LJ gave the guidance (at paragraph 5) set out below.

"*In many cases it is not necessary for a tribunal to identify or construct a particular comparator (whether actual or hypothetical) and to ask whether the Claimant would have been treated less favourably than that comparator. The tribunal can short circuit that step by focusing on the reason for the treatment*".

318. In every case the Tribunal has to determine the reason for the Claimant having been treated as he or she was. In *Nagarajan v London Regional Transport [1999] IRLR 572*, Lord Nicholls observed that "*this is the crucial question*". He also observed that in most cases this will call for some consideration of the mental processes (conscious or sub-conscious) of the alleged discriminator.

319. In *Gould v St John's Downshire Hill [2021] ICR 1, EAT*, Linden J made it clear that the Tribunal must consider the reason for the actions of the alleged discriminator, as set out below.

"The question whether an alleged discriminator acted "because of" a protected characteristic is a question as to their reasons for acting as they did. It has therefore been coined the "reason why" question and the test is subjective… For the tort of direct discrimination to have been committed, it is sufficient that the protected characteristic had a "significant influence" on the decision to act in the manner complained of. It need not be the sole ground for the decision… [and] the influence of the protected characteristic may be conscious or sub-conscious".

320. The focus is on the mental processes of the person who took the impugned decision(s). In a direct discrimination Claim, the Tribunal should consider whether that person was influenced consciously or unconsciously to a significant extent by the Claimant's relevant protected characteristic. The decision makers' motives are irrelevant.

321. If the Tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it is significant in the sense of being more than trivial (see *Nagarajan v London Regional Transport [1999]* and *Igen v Wong [2005] ICR 931, CA*).

Indirect discrimination

322. The statutory definition of indirect discrimination appears at Equality Act 2010 section 19 as set out below.

"*(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.*
(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if —
(a) A applies, or would apply, it to persons with whom B does not share the characteristic,
(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
(c) it puts, or would put, B at that disadvantage, and
(d) A cannot show it to be a proportionate means of achieving a legitimate aim".

323. In *Chief Constable of West Yorkshire Police v Homer [2012] ICR 704, SC*, it was explained that the "*law of indirect discrimination is an attempt to level the*

playing field by subjecting to scrutiny requirements which look neutral on their face but in reality work to the comparative disadvantage of people with a particular protected characteristic".

324. In *Dobson v North Cumbria NHS Foundation Trust [2021] IRLR 729, EAT*, the Employment Appeal Tribunal examined the concept of judicial notice and gave guidance as to the scope and application of the "*childcare disparity*", namely that women were more likely to suffer a disadvantage as a result of childcare responsibilities than men. The childcare disparity had been judicially noticed by Courts at all levels for many years and fell into the category of matters that an Employment Tribunal had to take into account if relevant. Judicial notice was not set in stone as societal norms and expectations changed over time. However, that did not apply to the childcare disparity. Things had progressed and men now bore a greater proportion of child caring responsibilities, but the position was still far from equal. The assumptions made and relied upon in the authorities remained very much supported by the evidence of current disparities between men and women in relation to the childcare burden. A party seeking to rely upon a matter in respect of which judicial notice was to be taken, should identify that matter up front. They did not need to expressly plead the term "*judicial notice*", but the Tribunal needed to be aware of precisely what should be judicially noticed and Respondents should have an opportunity to argue to the contrary. Although the childcare disparity was uncontroversial, it did not necessarily follow that particular working arrangements would place women at a disadvantage, as stated below.

"*However, taking judicial notice of the childcare disparity does not necessarily mean that the group disadvantage is made out. Whether or not it is will depend on the interrelationship between the general position that is the result of the childcare disparity and the particular PCP in question. The childcare disparity means that women are more likely to find it difficult to work certain hours (e.g. nights) or changeable hours (where the changes are dictated by the employer) than men because of childcare responsibilities. If the PCP requires working to such arrangements, then the group disadvantage would be highly likely to follow from taking judicial notice of the childcare disparity. However, if the PCP as to flexible working requires working any period of 8 hours within a fixed window or involves some other arrangement that might not necessarily be more difficult for those with childcare responsibilities, then it would be open to the Tribunal to conclude that the group disadvantage is not made out. Judicial notice enables a fact to be established without specific evidence. However, that fact might not be sufficient on its own to establish the cause of action being relied upon. As is so often the case, the specific circumstances will have to be considered and one needs to guard against moving from an "indisputable fact" (of which judicial notice may be taken) to a "disputable gloss" (which may not be apt for judicial notice)*" (paragraph 50).

325. The Employment Statutory Code of Practice of the Equality and Human Rights Commission provides the guidance that, in order to be a "*legitimate aim*", the aim should be "*legal, should not be discriminatory in itself, and must represent a real, objective consideration*" (paragraph 4.28).

326. In *Seldon v Clarkson Wright and Jakes (a Partnership) [2012] ICR 716, SC,* it was made plain (see paragraph 61) that the aims relied upon had to be relevant to the particular employment in question, as set out below.

"*Once an aim has been identified, it has still to be asked whether it is legitimate in the particular circumstances of the employment concerned. For example, improving the recruitment of young people, in order to achieve a balanced and diverse workforce, is in principle a legitimate aim. But if there is in fact no problem in recruiting the young and the problem is in retaining the older and more experienced workers then it may not be a legitimate aim for the business concerned. Avoiding the need for performance management may be a legitimate aim, but if in fact the business already has sophisticated performance management measures in place, it may not be legitimate to avoid them for only one section of the workforce*".

327. In *R (Elias) v Secretary of State for Defence [2006] EWCA Civ 1293, [2006] 1 WLR 3213, CA*, Mummery LJ explained (at paragraph 151) that "*the objective of the measure in question must correspond to a real need and the means used must be appropriate with a view to achieving the objective and be necessary to that end*". As such, it "*is necessary to weigh the need against the seriousness of the detriment to the disadvantaged group*". The Court of Appeal commended (at paragraph 165) the three-stage test for determining proportionality derived from *de Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing [1999] 1 AC 69, HL*, as set out below.

"*First, is the objective sufficiently important to justify limiting a fundamental right? Secondly, is the measure rationally connected to the objective? Thirdly, are the means chosen no more than is necessary to accomplish the objective?*"

328. This is not a range of reasonable responses test. As the Court of Appeal held in *Hardy & Hansons plc v Lax [2005] EWCA Civ 846, [2005] ICR 1565, CA*, it is not enough that a reasonable employer might think the criterion justified. The Tribunal itself has to weigh the real needs of the undertaking, against the discriminatory effects of the requirement (see paragraphs 31 and 32).

329. Thus, in considering justification, what is required is "*an objective balance between the discriminatory effect of the condition and the reasonable needs of the party who applies the condition*" (see *Allonby v Accrington & Rossendale College [2001] EWCA Civ 529, CA*).

330. The legal principles in respect of objective justification were summarised by Her Honour Judge Eady QC, as she then was, in *City of Oxford Bus Services Limited v Harvey [2018] UKEAT/0171/18* (at paragraph 22), as set out below.

"*(1) Once a finding of a PCP having a disparate and adverse impact on those sharing the relevant protected characteristic has been made, what is required is (at a minimum) a critical evaluation of whether the employer's reasons demonstrated a real need to take the action in question (Allonby).*

(2) If there was such a need, there must be consideration of the seriousness of a disparate impact of the PCP on those sharing the relevant protected characteristic, including the complainant and an evaluation of whether the former was sufficient to outweigh the latter (Allonby, Homer).

(3) In thus performing the required balancing exercise, the ET must assess not only the needs of the employer but also the discriminatory effect on those who share the relevant protected characteristic. Specifically, proportionality requires a balancing exercise with the importance of the legitimate aim being weighed against the discriminatory effect of the treatment. To be proportionate, a measure must be both an appropriate means of achieving the legitimate aim and reasonably necessary in order to do so (Homer).

(4) The caveat imported by the word "reasonably" allows that an employer is not required to prove there was no other way of achieving its objectives (Hardys). On the other hand, the test is something more than the range of reasonable responses (again see Hardys)".

331. An employer, in seeking to objective justification, does not have to demonstrate that there was no route other than the discriminatory practice by which the legitimate aim could have been achieved. However, the availability of a less discriminatory but equally effective measure will undermine the argument that a particular measure was proportionate (see *Hardys and Hansons plc v Lax [2005] ICR 1565, CA*).

Harassment

332. Equality Act 2010 section 26 includes the provisions set out below.

"*(1) A person (A) harasses another (B) if—*
(a) A engages in unwanted conduct related to a relevant protected characteristic, and
(b) the conduct has the purpose or effect of—
(i) violating B's dignity, or
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
(2) A also harasses B if—
(a) A engages in unwanted conduct of a sexual nature, and
(b) the conduct has the purpose or effect referred to in subsection (1)(b).
(3) ….
(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
(a) the perception of B;
(b) the other circumstances of the case;
(c) whether it is reasonable for the conduct to have that effect".

333. The Employment Statutory Code of Practice of the Equality and Human Rights Commission provides the guidance set out below.

"*7.7. Unwanted conduct covers a range of behaviour, including spoken or written words or imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person's surroundings or other physical behaviour.*

7.8 The word 'unwanted' means essentially the same as 'unwelcome' or 'uninvited'. 'Unwanted' does not meant that express objection has to be made to the conduct before it is deemed to be unwanted. A serious one-off incident can also amount to harassment".

334. The requirement under Equality Act 2010 section 26, that any alleged conduct must be "*related to*" a protected characteristic, covers a wider category of conduct than conduct "*because of a protected characteristic*" under Equality Act 2010 section 13. A broader enquiry is required involving a more intense focus on the context of the offending words or behaviour (see *Bakkali v Greater Manchester Buses (South) Limited* [2018] UKEAT/0176/17).

335. Guidance as to the approach to be adopted by the Tribunal in considering whether the conduct complained of was related to the relevant protected characteristic was provided by the Employment Appeal Tribunal in the case of *Tees, Esk and Wear Valleys NHS Foundation Trust v Aslam [2020] IRLR 495, EAT*, at paragraphs 24 and 25, as below.

"*However … the broad nature of the 'related to' concept means that a finding about what is called the motivation of the individual concerned is not the necessary or only possible route to the conclusion that an individual's conduct was related to the characteristic in question….*

Nevertheless, there must … still, in any given case, be some feature or features of the factual matrix identified by the tribunal, which properly leads it to the conclusion that the conduct in question is related to the particular characteristic in question, and in the manner alleged by the claim. In every case where it finds that this component of the definition is satisfied, the Tribunal therefore needs to articulate, distinctly and with sufficient clarity, what feature or features of the evidence or facts found, have led it to the conclusion that the conduct is related to the characteristic, as alleged. Section 26 does not bite on conduct which, though it may be unwanted and have the proscribed purpose or effect, is not properly found for some identifiable reason also to have been related to the characteristic relied upon, as alleged, no matter how offensive or otherwise inappropriate the Tribunal may consider it to be".

336. In order to assess the "*purpose*" of the alleged conduct, the Tribunal must consider the alleged harasser's motive or intention. When considering the "*effect*" of the alleged conduct, the Tribunal needs to analyse the three specific factors set out in Equality Act 2010 section 26(4)(a) to (c). This has both a subjective and an objective aspect. As to the former, the Claimant must have felt or perceived his or her dignity to have been violated or an adverse environment to have been created. As to the latter, if the Claimant had experienced those feelings or perceptions, the Tribunal must consider if it was reasonable for him or her to do so. If a Claimant is unreasonably prone to take offence, there will have been no harassment within the

meaning of the section (see *Richmond Pharmacology v Dhaliwal [2009] IRLR 336*, at paragraph 15).

337. In assessing whether the conduct met the required threshold by producing the proscribed consequences, Tribunals should not place too much weight on the timing of any objection (see *Weeks v Newham College of Further Education [2012] UKEAT/0630/11*).

338. In *Richmond Pharmacology v Dhaliwal [2009] IRLR 336, EAT,* a case involving alleged harassment related to race, the Employment Appeal Tribunal provided wider guidance to the effect that whether it was reasonable for a Claimant to regard treatment as amounting to treatment that violates his or her dignity or has an intimidating, hostile, degrading, humiliating or offensive environment is a matter for factual assessment of the Tribunal having regard to all the relevant circumstances, including the context. The EAT provided the further guidance set out below.

"*Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct … it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase*".

339. In *Land Registry v Grant [2011] ICR 1390, CA*, in speaking of the statutory language of Equality Act 2010 section 26(1), Elias LJ provided the guidance set out below.

"*Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment*".

340. The Tribunal also notes the commentary in '*Harvey on Industrial Relations and Employment Law*' at paragraph L426.01 as set out below.

"*Even under the broader definition of 'related to', misbehaviour at work - even when it might properly be described as brutal or malicious - will not necessarily fall into the camp of unlawful harassment; it must still be 'related to' a relevant protected characteristic. Ultimately, the protection is against harassment that is, itself, a form of discrimination. Bullying is, of itself, not discrimination, except in the unhelpful sense that involves treating some individuals differently to others. The intention of the legislation is to give effect to the principle of equality. It is no part of the principle of equality that antisocial behaviour in the workplace per se should be punished, however unacceptable that behaviour might be in itself*".

Victimisation (Equality Act 2010 section 27)

341. Equality Act 2010 section 27(1) and (2) is in the terms set out below.

"*(1) A person (A) victimises another person (B) if A subjects B to a detriment because —*
(a) B does a protected act, or
(b) A believes that B has done, or may do, a protected act.
(2) Each of the following is a protected act —
(a) bringing proceedings under this Act;
(b) giving evidence or information in connection with proceedings under this Act;
(c) doing any other thing for the purposes of or in connection with this Act;
(d) making an allegation (whether or not express) that A or another person has contravened this Act".

342. Something amounts to a detriment for these purposes if the treatment is of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to her detriment (see *Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337, HL*, paragraphs 31 to 37). It is an objective test with the focus on the perception of the reasonable worker in all the circumstances of the case. Detriment is, accordingly, treatment which a reasonable worker would or might regard as being to their disadvantage. It is not necessary for the Claimant to demonstrate some physical or economic consequence.

343. In *Derbyshire v St Helens Metropolitan Borough Council [2007] ICR 841, HL*, Lord Neuberger stated that the test is not satisfied merely by the Claimant showing that he or she has suffered mental distress; it would have to be objectively reasonable in all the circumstances. In assessing whether there is a detriment therefore consideration needs to be given to both subjective and objective elements, looking at matters from the Claimant's point of view but his or her perception must be reasonable in the circumstances.

344. The provisions in Equality Act 2010 section 27 in respect of victimisation do not require any form of comparison. If it is shown that a protected act has taken place and the Claimant has been subjected to a detriment, the issue is essentially that of the "*reason why*". In other words, the protected act must be an effective and substantial cause of the treatment, it does not need to be the principal cause. The Tribunal is concerned with establishing what the real (conscious or sub-conscious motivation) reason or reasons for the treatment were.

345. In determining whether a detriment was because of a protected act, it is important that the protected act is identified with precision and that the relationship between the detriment and that act specifically is examined (see *JJ Food Service Limited v Mohamud [2016] UKEAT/0310/15*).

346. An approach that distinguishes between a protected act and the manner of doing that act was endorsed by the Employment Appeal Tribunal in *Martin v Devonshires Solicitors [2011] ICR 352*. There may be cases where the reason for the detriment was not the protected act as such but some feature of it which could properly be treated as separable — such as the manner in which the protected act was undertaken.

Burden of proof in discrimination cases

347. Equality Act 2010 section 136 provides for a shifting burden of proof, as set out below.

"*(2) If there are facts from which the court could decide in the absence of any other explanation that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
(3) But subsection (2) does not apply if A shows that A did not contravene the provision".

348. Guidance on the burden of proof was given by the Court of Appeal in *Igen v Wong [2005] ICR 931*. This guidance has subsequently been approved by the Court of Appeal in *Madarassy v Nomura International plc [2007] ICR 867*, and by the Supreme Court in *Hewage v Grampian Health Board [2012] ICR 1054* (at paragraphs 25-32). In *Efobi v Royal Mail Group Limited [2021] ICR 1263*, at paragraph 26, Lord Leggatt made it clear that Equality Act 2010 section 136 had not made any substantive change to the previous law.

349. The burden of proof starts with the Claimant. It is for the Claimant to prove facts from which the Tribunal could infer, in the absence of any other explanation, that the treatment was at least in part the result of the Claimant's relevant protected characteristic. At the first stage, when considering what inferences can be drawn from the primary facts, the Tribunal must ignore any explanation for those facts given by the Respondent and assume that there is no explanation for them. It can, however, take into account evidence adduced by the Respondent insofar as it is relevant in deciding whether the burden of proof has moved to the Respondent. If such facts are established, then the burden of proof transfers to the Respondent to establish on the balance of probabilities that the protected characteristic formed no part of the reasoning for the impugned decisions or treatment.

350. The mere fact that the Claimant is treated unreasonably does not suffice to justify an inference of unlawful discrimination to satisfy the first stage of the shifting burden of proof. It may be that the employer has treated the Claimant unreasonably. That is a frequent occurrence quite irrespective of the race or age or other protected characteristics of the employee and will not, by itself, be enough to shift the burden of proof (see *Bahl v The Law Society [2004] IRLR 799*, and *Zafar v Glasgow City Council [1998] IRLR 36*).

351. In *Madarassy v Nomura International plc [2007] ICR 867*, the Court of Appeal emphasised that there must be something more than simply a difference in protected characteristic and a difference in treatment for the burden of proof to shift to the Respondent. Mummery LJ gave the guidance set out below.

"*The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the Respondent had committed an unlawful act of discrimination*".

352. *Madarassy v Nomura International plc [2007]* was approved by the Supreme Court in *Hewage v Grampian Health Board [2012] ICR 1054*, where Lord Hope

stated that it was important not to make too much of the role of the burden of proof provisions as set out below.

"*They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other*" (paragraph 32).

353. In *Network Rail Infrastructure v Griffiths-Henry [2006] IRLR 865*, Elias J said (at paragraph 15) that the mere fact that an unsuccessful candidate was a black woman and successful candidates were white men would be insufficient to be capable of leading to an inference of discrimination in the absence of a satisfactory non-discriminatory explanation. To shift the burden of proof, a Claimant must also prove something more. That is, the Claimant must prove facts from which the Tribunal could infer that there is a connection between the protected characteristics and the detrimental treatment, in the absence of a non-discriminatory explanation.

354. It is not necessary in every case for a Tribunal to go through the two-stage procedure. In some cases it may be appropriate for the Tribunal simply to focus on the reason given by the employer and if it is satisfied that this discloses no discrimination, then it need not go through the exercise of considering whether the other evidence, absent the explanation, would have been capable of amounting to a prima facie case under stage one of the shifting burden of proof (see *Brown v Croydon LBC [2007] IRLR 259, CA*, at paragraphs 28 to 39).

355. However, in *Anya v University of Oxford [2001] ICR 847, CA*, the Court of Appeal pointed out that very little direct discrimination is today overt or even deliberate so that what the relevant authorities "*tell tribunals and courts to look for, in order to give effect to the legislation, are indicators from a time before or after the particular decision which may demonstrate that an ostensibly fair-minded decision was, or equally was not, affected by racial bias*".

Time limits

356. The time limits applying to complaints of unfair dismissal are provided for at ERA 1996 section 111 namely that a complaint cannot be considered unless it is presented to the Tribunal "*(a) before the end of the period of three months beginning with the effective date of termination, or (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three mont*hs".

357. In *Beasley v National Grid* [2008] EWCA Civ 742, CA, Tuckney LJ held that whilst section ERA 1996 111 may impose a harsh regime, the time bar exists for "*the very good policy reason, that parties should know where they stand within a limited time of any dispute arising*". Tuckney LJ also stated that there are good policy reasons behind the regime outlined in ERA 1996 section 111(2) and there "*is no grey area for complaints which are only a bit out of time*".

358. Under ERA 1996 section 80H(5), similar provisions to those in ERA 1996 section 111 apply to a flexible working complaint, with any discretion to extend time

similarly depending on the Tribunal being satisfied that it was not reasonably practicable to bring proceedings earlier.

359. In relation to discrimination complaints, section 123(1)(a) of the Equality Act 2010 provides that "*a complaint … may not be brought after the end*" of … "*the period of 3 months starting with the date of the act to which the complaint relates*" or "*such other period as the employment tribunal thinks just and equitable*". Equality Act 2010 section 123(3)(a) provides that "*conduct extending over a period is to be treated as done at the end of the period*" and section 123(3)(b) provides that "*failure to do something is to be treated as occurring when the person in question decided on it*".

360. In *Commissioner of Police of the Metropolis v Hendricks [2003] ICR 530, CA*, the Court of Appeal gave guidance as to considering whether allegations of discrimination amounted to an act extending over a period (so that any time limit would run from the end of that period) set out below.

"*The concepts of policy, rule, practice, scheme or regime in the authorities were given as examples of when an act extends over a period. They should not be treated as a complete and constricting statement of the indicia of "an act extending over a period". I agree with the observation made by Sedley LJ, in his decision on the paper application for permission to appeal, that the appeal tribunal allowed itself to be side-tracked by focusing on whether a "policy" could be discerned. Instead, the focus should be on the substance of the complaint that the commissioner was responsible for an ongoing situation or a continuing state of affairs in which female ethnic minority officers in the service were treated less favourably. The question is whether that is "an act extending over a period" as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed*" (Mummery LJ at paragraph 52)

361. In *Bexley Community Centre v Robertson [2003] IRLR 434, CA*, the Court of Appeal provided the guidance set out below.

"*It is also of importance to note that the time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule*" (Auld LJ at paragraph 25).

362. Thus, the burden of proof is on a Claimant to satisfy the Tribunal that any complaint was either made within the applicable time limit for doing so, or that it would be just and equitable to extend time.

363. In *Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] ICR 1194, CA*, the Court of Appeal dealt with the argument that, in the absence of an explanation from the Claimant as to the reasons for not bringing a Claim in time

and an evidential basis for that explanation, the Employment Tribunal could not properly conclude that it was just and equitable to extend time. The argument was rejected, as set out below.

"*I cannot accept that argument. As discussed above, the discretion given by section 123(1) of the Equality Act 2010 to the employment tribunal to decide what it 'thinks just and equitable' is clearly intended to be broad and unfettered. There is no justification for reading into the statutory language any requirement that the tribunal must be satisfied that there was a good reason for the delay, let alone that time cannot be extended in the absence of an explanation of the delay from the claimant. The most that can be said is that whether there is any explanation or apparent reason for the delay and the nature of any such reason are relevant matters to which the tribunal ought to have regard*" (paragraph 25).

364. In *British Coal Corporation v Keeble [1997] IRLR 336*, the Employment Appeal Tribunal suggested that the factors listed in Limitation Act 1980 section 33 might serve as a checklist of potentially relevant factors to take account in considering whether to exercise the discretion to extend time in discrimination cases, with the position as to the applicability of Limitation Act 1980 section 33 being summarised below.

"*That section provides a broad discretion for the Court to extend the limitation period of three years in cases of personal injury and death. It requires the court to consider the prejudice which each party would suffer as the result of the decision to be made and also to have regard to all the circumstances of the case and in particular, inter alia, to –*
(a) the length of and reasons for the delay;
(b) the extent to which the cogency of the evidence is likely to be affected by the delay;
(c) the extent to which the party sued had co-operated with any requests for information.
(d) the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action.
(e) the steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action".

365. In *Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23, [2021] ICR D5*, Underhill LJ indicated concern that Tribunals had tended to use the factors relevant in dealing with any discretion to extend time in personal injury cases, as set out in Limitation Act 1980 section 33 as a checklist and advised that they should not do so. He went on to give the guidance set out below.

"The best approach for a tribunal in considering the exercise of the discretion under section 123(1)(b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular (as Holland J notes) "the length of, and the reasons for, the delay". If it checks those factors against the list in Keeble, well and good; but I would not recommend taking it as the framework for its thinking".

366. The fact that a Claimant has awaited the outcome of his or her employer's internal procedures before making a Claim is just one matter to be taken into account by an Employment Tribunal in considering whether to extend the time limit for making a Claim (see *Apelogun-Gabriels v London Borough of Lambeth [2002] ICR 713, CA*).

Discussion and Conclusions

Time Issues

367. ACAS received notification for the purposes of early conciliation on 23 March 2022 and issued the Early Conciliation Certificate on 3 May 2022. Proceedings were commenced against the First Respondent on 8 June 2022 by an ET1 Form of Claim. As such, the primary time limit of three months is extended by the period of time between the day after the early conciliation request was received by ACAS and the day when the Early Conciliation Certificate is deemed to have been received by the prospective Claimant. This period of time amounts to 41 days. It follows that the normal time limit of 3 months is extended by 41 days. Thus, any complaint about an act or omission which occurred on or before 26 January 2022 was not brought within the primary time limit of three months.

368. Based on our conclusions, set out below, in relation to the individual complaints of discrimination, the Tribunal was not satisfied that the Respondents were responsible for an ongoing situation or a continuing state of affairs in which the Claimant was being subjected to treatment which was in breach of the Equality Act 2010.

369. The Claim involves the Claimant alleging discriminatory treatment going back to the early part of her employment. When the Claimant was asked as to the reason for not having brought proceedings earlier, her explanation was that she had been hoping that the various issues would get resolved, that she would be able to keep on working and that the alleged treatment of her in issue would stop. Bringing proceedings occurred to her when she realised that she could see that there was a campaign against her. She stated that she realised that there was such a campaign about the time of the flexible working appeal conducted by Remi Suzan. When it was suggested to the Claimant that she would have been aware of the possibility of bringing proceedings against the Company through her awareness of the proceedings brought by Michelle Bennett, the Claimant said that it did not occur to her because she was heavily pregnant and it was the middle of a pandemic.

370. The Tribunal was concerned that this involved an element of retrospective rationalisation as to the timing of taking the steps to commence proceedings.

371. The extract from the statement of Michelle Bennett describes the Claimant stating, at the time of her first pregnancy, that she was going to take the Company to an Employment Tribunal [1191] which would suggest that the Claimant was considering the possibility of legal proceedings as far back as 2018. This is consistent with the minutes of the meeting with Tom Delves on 23 November 2018 when the Claimant is recorded as having stated that if the Company treated her in the way in which she was saying it had been suggested she would be treated, then

she would not accept such treatment and would see the Company "*in a different room*" [655]. Clearly the Claimant would have been aware of the possibility of taking Employment Tribunal proceedings against the Company from the very fact that she was a witness who provided a Statement of Evidence in connection with the Employment Tribunal proceedings brought by Michelle Bennett.

372. The Claimant's conduct at the time of the 2 August 2021 appraisal was also consistent with the Claimant having in mind the possibility of legal proceedings against the Company. This was one of a number of meetings covertly recorded by the Claimant. She told the Tribunal that one of the reasons for recording meetings doing so were so as to seek advice from ACAS and through Internet forums. She had come to the appraisal with a file of historical e-mails and Paul Starkey was sufficiently concerned to e-mail Tom Delves afterwards as to the possibility that the Claimant was building a case for a Claim [725]. Given the Claimant's previous comments about the possibility of legal proceedings, the Tribunal thinks that it is likely that one of the purposes for the Claimant gathering evidence was that it might be used in support of a Claim.

373. In seeking to explain not having issued proceedings earlier, the Claimant stated that she was not in a position to issue proceedings in December 2021 because of her mental health. The significance of December 2021 is that it is complaints about matters from December 2021 or earlier which are outside the primary time limit. It is also significant that, according to the occupational health report dated 17 March 2022, the history given by the Claimant was that her mental health reached its nadir in December 2021. However, there is little by way of medical evidence to suggest that the Claimant would not have been able to have taken steps for the purposes of taking proceedings at any point in time, whether in December 2021, or earlier or later. In fact, the Claimant's sickness record shows that she was off work for a total of 11 days from 20 October 2021 and was back at work and working normally in December 2021, as can be seen from various e-mails dealing with work related issues. There is a brief report dated 6 April 2022 [863] from the Claimant's mental health coach whose involvement dated from 20 January 2022. This refers to the Claimant becoming very distressed and upset whilst discussing her current employment situation and states that this had been continuously repeated on a weekly basis since the first meeting on 20 January 2022. As of the date of the report, the Claimant was being advised to speak to her GP as it appeared that her feelings of distress were escalating as a result of the issues that she was describing. However, not long before this, she had been able to submit a detailed grievance on 1 March 2022 [184-192]. She had also been able to give a good account of herself in the meeting to discuss a flexible working application on 2 February 2022. Looking at the situation prior to December 2021, the Claimant was mostly in work generating and dealing with e-mails regarding work related issues. She had been able to amend the appraisal form prior to the appraisal meeting on 2 August 2021 so as to detail matters (at section 9) which were causing her concern [705]. There was a lengthy discussion as to such matters in the appraisal meeting. Ultimately, the Tribunal was not persuaded that this was a case where the Claimant's mental health either prevented her from issuing proceedings at an earlier point in time or was a significant factor in proceedings not been issued earlier.

374. The first step for the purposes of taking proceedings was initiated by the Claimant on 23 March 2022. By this point in time, she had raised a grievance, although the grievance hearing was yet to take place. Her third flexible working request had been refused but the meeting to consider her appeal against this decision had yet to take place. As such, it would not seem to be the case that the Claimant was waiting for the inclusion of internal processes, because these were still ongoing. Indeed, in logical terms, the notification of ACAS followed not long after the Claimant had raised a grievance and had the grievance meeting with Angela Foster. The main focus of the grievance was specifically stated to be the "numerous issues that I've encountered for the past year at work" [185]; in other words, issues which had arisen from the point in time when the Claimant had returned to work from maternity leave. The Claimant was claiming that her treatment amounted to bullying and harassment.

375. The grievance specifically refers to the Claimant having sought advice / information from the Citizens' Advice Bureau and ACAS [185]. When she commenced proceedings by filing the ET1 form of Claim on 8 June 2022, the Claimant was able to attach detailed Particulars of Claim to the ET1 Form of Claim which identified specific legal causes of action, the relevant statutory provisions under which they arose and the remedies available.

376. In her closing written submissions to the Tribunal, the main point raised by the Claimant as to the time issue, other than her contention that the conduct of the Respondents extended over a long period of time, was that, in "*regard to the other matters raised that are prior to 23 December 2021*" (which was the potential cut-off date identified by the Respondents in the List of Issues [88]), it "*was really important to raise them so the Judge, along with the members of the panel, could focus on the surrounding circumstances and previous history in order to look for indicators from a time before or after as per the Anya v University of Oxford [2001] IRLR 377, CA*".

377. In terms of prejudice, the Tribunal accepted that there was significant prejudice to the Respondents in having to deal with historic complaints regarding issues which were often only raised retrospectively and / or informally, and, as such, had not been investigated in detail at the time. It did seem to the Tribunal that the cogency of the evidence had been adversely impacted. There are a number of examples during the hearing of witnesses not been able to remember events accurately, in particular on the part of Paul Starkey.

378. In terms of the conduct of the Respondents in dealing with the matters raised, whilst it was obviously a part of the Claimant's case that the issues which she raised had not been dealt with satisfactorily, it was nevertheless the position that the Company had undertaken a detailed investigation of the grievance itself and had effectively commissioned four separate investigations by external consultants, namely the original grievance appeal, the investigation into the victimisation grievance, the investigation of the alleged breakdown in the employer and employee relationship, and the investigation into the issues raised by the resignation letter. However, these were all complaints made in the period from March 2022

379. In terms of the prejudice to the Claimant through being barred from pursuing complaints in respect of matters which are outside the primary time limit, the Claimant was still in a position to pursue her complaints regarding her alleged treatment from the beginning of 2022 culminating in her resignation. Moreover, it was open to her to seek to rely upon evidence regarding earlier matters in so far as it was her case that this was relevant evidence which the Tribunal should take into account in determining the complaints which were in time. It was also open to her to seek to rely upon such evidence in as far as it was evidence about matters which, on her case, give rise to a cumulative breach of the implied term of trust and confidence so as to entitle her to resign and claim to have been constructively dismissed.

380. Having regard to the appellate guidance referred to above, and noting the points made in *Bexley Community Centre v Robertson [2003] IRLR 434, CA*, as to time limits being exercised strictly in employment cases, that the exercise of discretion so as to extend time is the exception rather than the rule, and it is for the Claimant to convince the Tribunal the time should be extended the basis of being just and equitable to do so, the Tribunal concluded, in the light of the circumstances set out above, that it was not just and equitable to extend time.

Flexible working

381. The List of Issues identified the complaints set out below.

(a) "*Did a Respondent made a comment to the Claimant directly related to the Claimant's age and flexible working? The Claimant relies on the fact that the Respondent has given as a reason for not granting the Claimant's flexible working request that the Claimant is "still too young"*".

(b) "*Was the investigation impartial? The Claimant says the investigator during the investigation meeting told the Claimant that they (the First and Third Respondents) will not grant flexible working, showing that the decision was made prior the investigation took place*".

(c) "*Did the decisions taken, follow the same principles as for the rest of the First Respondent's employees?*"

382. ERA 1996 section 80H(1) limits complaints to the Employment Tribunal arising out of flexible working applications, to complaints made on the grounds that:
(a) the employer has failed to comply with section ERA 1996 section 80G(1) (under which the employer has to deal with the application in a reasonable manner, has to notify the employee of the decision within the three months, unless a longer period has been agreed, and can only refuse the application because it considers that one or more of the reasons listed in ERA 1996 section 80G(1)(b) apply); or
(b), the employer's decision to reject the application was based on incorrect facts (for these purposes, the reference to the decision is treated, by virtue of ERA 1996 section 80H(3A) as being a reference to the appeal decision); or
(c) the employer treated an application or appeal as having been withdrawn without complying with the requirements for doing so.

383. It can be seen that the matters raised in the agreed List of Issues as flexible working complaints do not specifically identify the relevant grounds of complaint under ERA 1996 section 80H(3A). However, the statutory ground of complaint, if any, which would potentially cover the complaints in the List of Issues is that of a complaint of failing to comply with the requirement to deal with the application in a reasonable manner. In considering such a complaint, the Tribunal had regard to the 2014 ACAS Code of Practice (Handling in a reasonable manner requests to work flexibly).

384. The first complaint is to the effect that a comment was made in relation to the Claimant's age, specifically that a reason was given for not granting the Claimant's flexible working request, namely that the Claimant was "still too young".

385. The Tribunal was specifically referred to the comments of Remi Suzan in the transcript of the recording made by the Claimant of the flexible working appeal meeting which appear at page 266 of the Bundle. The full text of his comments has been set out in our findings of fact. It can be seen that the comment made was not that that the Claimant was "*still too young*". The reference to the Claimant being young was within the sentence which stated that this "*is a permanent request for ever, then you're a very young individual, Marta you've still got 20 years of work* …" [266]. It can also be seen that this was not a reason given for refusing the application. The reasons given were three of the statutory grounds [290]. Rather, it was a point made over the course of a discussion (at the appeal meeting) about the application.

386. The Tribunal specifically noted the effect of paragraph 8 of the ACAS Code of Practice which states that the employer should "*consider the request carefully looking at the benefits of the requested changes in working conditions for the employee and your business and weighing these against any adverse business impact of implementing the changes*" and that in "*considering the request you must not discriminate unlawfully against the employee*". The context of the comments of Remi Suzan was that he was making clear that, whereas the previous home working arrangements had been temporary arrangements which applied for a period of twelve months, the new application was a proposal to put in place permanent home working arrangements which could potentially apply for the remainder of the Claimant's working life, and the Company had to take into account the fact that those arrangements would be in place permanently, whereas the conditions applicable to the Company's work might change (he gave the example of returning back to normal working conditions having been conducting work remotely through Teams meetings). This was a legitimate consideration, given that, in the decision letter the Company identified that there would be a detrimental effect on the ability to meet customer demand, on quality, and on performance, and these were impacts which the Company would not simply have to be accommodate for a period of twelve months, but would potentially have to be accommodated for far longer.

387. It is also significant that, at the time, the Claimant clearly understood the context within which the comment was made and did not seek to challenge the comment as discriminatory. The Claimant clearly understood that the context related to the duration of any flexible working arrangements, as can be seen from the fact that she referenced Remi Suzan's comments in a discussion about

possible alternative arrangements which raised the possibility of her application being agreed for four years rather than permanently [270]. In the circumstances, the Tribunal was not satisfied that the comments of Remi Suzan were discriminatory or involved a breach of the requirement to deal with a flexible working application reasonably.

388. The second complaint is that the decision maker was not impartial and / or prejudged the outcome. As stated, the effect of ERA 1996 section 80H(3A) is that this complaint of failing deal with the application in a reasonable manner has to be dealt with on the basis that it is the reasonableness of the way in which the Company dealt with the appeal which is in issue. Thus, the question is whether the decision maker, Remi Suzan, was lacking in impartiality and / or pre-judged the decision so as to have the effect that the Company failed to deal with the appeal in a reasonable manner.

389. In the Particulars of Claim, the complaint as to a lack of impartiality made reference to Remi Suzan having allegedly made the comments that the Claimant was "too young" [23], which have already been considered above. On the basis of the conclusions arrived at by the Tribunal regarding those comments, the Tribunal was not satisfied that the comments amounted to failing to deal with the appeal in a reasonable manner by displaying a lack of impartiality.

390. The Claimant's Statement of Evidence referred the Tribunal to the comments which Remi Suzan was recorded as having made in the transcript at page 274 of the Bundle. This part of the discussion has also been summarised in our findings of fact. The Tribunal concluded that this was a discussion as to the extent to which the Claimant would be willing to be flexible and come into work on a different day if the flexible working application was granted. The Claimant had invited Remi Suzan to agree that she had always been flexible, which clearly caused Remi Suzan some difficulty, particularly as he interpreted the way in which the Claimant had qualified her stated willingness to come into work on a different day as amounting to saying that she was not prepared to come into the office unless there was a reason which she deemed to be acceptable. In doing so, Remi Suzan also referenced the Company's Home Working Policy on the basis that it reflected view of the Company that there were benefits for its staff to be in the office three days a week, whether there was a good reason or not.

391. It was also alleged in the Particulars of Claim [24-25] that Remi Suzan "*had his mind made up prior to the commencement of the meeting*" as "*a consequence of him discussing confidential information with Glenn Sheldrake and Paul Starkey*" with the Claimant stating that she "*feels that because she has raised a grievance, she was victimised during the appeal process*". This was not dealt with in the Claimant's Statement of Evidence. However, taking the assertion as it was made in the Particulars of Claim at face value, the Tribunal was not satisfied that speaking with an employee's managers prior to dealing with a flexible working appeal would, without more, give rise to a situation where it could be said that the person who was due to make the appeal decision had made his or her mind up prior to the commencement of the meeting, or otherwise failed to deal with the appeal in a reasonable manner. Indeed, it will often make sense to get more information about the position so as to be as well-informed as possible about the issues before arriving at a decision.

392. In terms of confidential information being disclosed, the Particulars of Claim raised the possibility that Glenn Sheldrake and / or Paul Starkey had made Remi Suzan aware of the occupational health report. This issue was the basis for one of the Claimant's complaints of harassment related to sex (listed as (h) in the second list of complaints of harassment related to sex). In dealing with that complaint further below, the Tribunal has set out its conclusions in relation to the relevant factual circumstances. Those conclusions also summarise the relevant discussion regarding the occupational health report which took place at the flexible working appeal meeting as a result of the Claimant having raised the issue of whether consideration was going to be given to the recommendations of the report. On the basis of those conclusions, the Tribunal was satisfied that the factual circumstances in relation to this issue did not establish that Remi Suzan had made his mind up prior to the commencement of the flexible appeal meeting through any such discussion.

393. It follows that the Tribunal was not satisfied that the issues raised by the Claimant in support of this complaint established amounted to Remi Suzan lacking impartiality, and / or prejudging the issues, so as to result in the Company failing to deal with the appeal in a reasonable manner. In the first place, it needs to be recognised that a flexible working appeal meeting is not an independent hearing. It is a meeting between two parties, who will have their respective positions. It was to be expected that there would be a discussion around those respective positions. The fact that the Company already had a policy, which allows home working two days per week, and the rationale behind that policy, were a part of that position. Moreover, it was effectively a default position open to the Claimant, as made clear in the outcome letter dated 14 March 2022 [194] in that, as an alternative to her flexible working request, she could seek to be allowed to work two days per week at home subject to workload and management approval. However, none of this amounted to this being a position from which the Company was not willing to depart. This was demonstrated by the fact that, at the very point in time that the Claimant's application and appeal were being considered, the Claimant's working arrangements involved working four days a week at home, but for a fixed period. It is also clear from the outcome letter for both the application and the appeal, that it would have been open to the Claimant to put forward an alternative proposal, without that proposal being limited to arrangements which came within the scope of the Home Working Policy [194, 292-293].

394. The Case Management Order [59] had directed the Claimant to identify the specific complaints which she was making under Employment Rights Act 1996 section 80H(1) in respect of her flexible working request. In the Claimant's Further Particulars [70], the complaint of failing to deal with the request in a reasonable manner by not being impartial was also made by reference to comments made by Remi Suzan in the flexible working appeal meeting which showed a lack of impartiality and an intention to slander the Claimant, with a specific example being given of "*you wouldn't have a clue of what you are looking at*". This exchange was not specifically referred to in the Claimant's Statement of Evidence. However, it appeared that this amounted to the Claimant's interpretation of comments made by Remi Suzan regarding some areas where the Claimant engineering experience was lacking. A specific example would be that of his comments regarding factory testing [279] where he said "*you wouldn't actually know what you're looking at*

Marta" [279]. It is to be noted that the Claimant's constructive dismissal complaint, as set out in the List of Issues, had also relied upon Remi Suzan having stated that "*you wouldn't have a clue of what you are looking at*". Either way, the point being made by Remi Suzan was that the Claimant's exposure to the workplace was limited to one day a week, and he was concerned that this would prevent the Claimant from getting the exposure to the experience that she needed. The Tribunal did not accept that any such discussion showed Remi Suzan lacking impartiality so as to be failing to deal with the Claimant's flexible working appeal in a reasonable manner. It was to be expected that the appeal meeting involved discussion as to the possible drawbacks involved in working from home. It was entirely appropriate to seek to identify potential drawbacks and then to discuss them with the Claimant.

395. The Tribunal was not satisfied that this amounted to slandering the Claimant which was the description used in the Further Particulars. The Tribunal accepted the evidence of Remi Suzan as to the basis for his opinion and assessment the Claimant was lacking in engineering experience. In relation to the issue of factory testing, the Claimant did not seek to challenge his assessment during the flexible working appeal meeting. Indeed, the position was quite the reverse in that she sought to make a different point regarding whether Bhupinder Padda had been asked to attend any factory test and when Remi Suzan specifically asked her if she would "*be able to do one*", she answered in the negative and reiterated that point or question relating to whether Bhupinder Padda had been asked to go to a factory test [279].

396. The third complaint raised the issue as to whether the decisions taken followed the same principles as for the rest of the Company's employees.

397. In the Particulars of Claim, The Claimant complained that the Company failed to follow the flexible working request application procedure as they changed the investigator for the appeal meeting and included two HR members without this being part of the procedure [23]. This complaint appeared to be misconceived. The Respondent's minutes of the flexible working appeal referred to Remi Suzan as the investigating manager considering the appeal. Clearly, any appeal needed to be considered by a different decision maker to the decision maker who had made the decision in respect of the original request. Similarly, different HR officers attended the flexible working appeal, namely Oliver Dawson, HR Business Partner and Marta Czyz, HR Administrator, who was there as a note taker. There was nothing unreasonable in these individuals being involved in the flexible working appeal in the way that they were.

398. In so far as the Claimant sought to contrast her position and her unsuccessful flexible working application with other employees who either had flexible working or home working arrangements in place, it was clear that the Company had allowed a number of individuals to benefit from home working arrangements. For example, both Bhupinder Padda and Warren Mullem worked from home two days a week, with these being arrangements which were specifically provided for under the Company's Home Working Policy, subject to workload and management approval [213]. As stated, in the flexible working request outcome letter and in the flexible working appeal decision letter, it was made clear to the Claimant that it was open to her to seek the approval of home

working arrangements under the Company's Home Working Policy, but in the course of the flexible working appeal she had specifically rejected this as a suitable alternative [270]. As part of the Claimant's case, she also sought to compare herself with two other individuals, Peter Dibbens and Karl Doyle, who were stated to be working from home permanently. However, the Tribunal was satisfied that the circumstances of these two individuals were completely different in that Peter Dibbens was an agency worker, and Karl Doyle lived in and travelled from Ireland, and was a director of Gratte Brothers Limited, which was a different Company.

399. As part of the narrative set out in the Claimant's Particulars of Claim, she asserted that the "*Claimant felt that the reasons for the Respondent to deny her request were not based on truthful facts and she decided to raise an appeal*" [22]. However, she did not set out the respects in which it was alleged that the facts were untrue. Moreover, this is a reference to the facts relied upon in the decision that was made prior to her appeal, whereas any complaint as to "*incorrect facts*" would need to be in relation to the appeal decision, for the reasons already stated above.

400. The Claimant's Further Particulars did specifically identify a complaint under ERA 1996 section 80H(1)(b) to the effect that the decision to reject the flexible working request was not based on correct facts [70]. The specific grounds of this complaint were to the effect that the first point of the outcome letter dated 14 March 2022 had suggested that the Claimant's flexible working pattern had originally been agreed on the basis that it was a temporary change to a working pattern and was set against the wider picture of the Covid-19 pandemic, whereas the Claimant made the point that her flexible working arrangements had been granted in 2018 (it fact, it was January 2019) and were still in place, whilst the pandemic had started in March 2020. This was a complaint about the original decision in respect of the Claimant's flexible working request. As already stated, the effect of ERA 1996 section 80H(3A) is that the complaint needed to be made in relation to the appeal decision rather than the original decision. In any event, the outcome letter [193] was clearly referring to the temporary flexible working arrangements which had been agreed for a fixed period of twelve months from April 2021 in which case it was accurate to say that any agreement was set against the wider picture of the pandemic which had resulted in a large number of people working from home. The appeal decision letter dated 4 April 2022 [290] had dealt with the point being made by the Claimant by making the further point that her request in relation to her current flexible working arrangements had been agreed on 13 November 2020 during a national lockdown. The Claimant was seeking to argue that her flexible working arrangements had nothing to do with the pandemic in that equivalent arrangements had been granted in January 2019 [657] to apply following her previous return from her first period of maternity leave which predated the pandemic. However, the original flexible working arrangements had been for a period of twelve months from the Claimant's return to work from maternity leave in July 2019, so that it became necessary for the Claimant to make a further flexible working application which was considered in November 2020 at a point in time when it would have been a relevant consideration that home working arrangements were in place across the Company's workforce as result of the pandemic. In so far as the Claimant sought to label the relevant part of the subsequent flexible working

decision dated 14 March 2022 as "*untruthful*" [200], this rather served to demonstrate how lightly the Claimant was prepared to allege untruthfulness.

401. In her Particulars of Claim, the Claimant complains about the delay in dealing with her application and the appeal but accepts that the outcome to the appeal was provided within the decision period of three months (dating from the date of the application rather than the appeal) [23]. Nevertheless, even where an application is dealt with within the decision period, it is still open to an employee to complain that the delay in dealing with the application amounted to failing to deal with the application in a reasonable manner. However, for the reasons set out in the following paragraph, the Tribunal did not consider that such a complaint was made out in relation to the period taken to deal with the Claimant's application and appeal.

402. It is important to note that this was a case where the Claimant already had flexible working arrangements in place as a result of her flexible working application in 2020 having been accepted (on the basis that she could work from home for four days a week with her daily working hours being 8:30 am to 5.00pm) for a period of twelve months which was anticipated to run from her return from maternity leave on 26 April 2021 [138]. The Claimant was on holiday between 12 and 18 January 2022 [770] and then off work due to sickness between 26 and 28 January 2022 [770] so that she returned to work on 31 January 2022. On 27 January 2022, the meeting to discuss her flexible working request had been arranged for 31 January 2022 [164-165], although this was subsequently rearranged to 2 February 2022 to accommodate the Claimant [163-166]. At the beginning of the flexible working meeting on 2 February 2022, there was a discussion as to the timeframe within which the application would be considered, with the Claimant's concern being as to the position should her existing flexible working arrangements expire with no other agreement in place. In response, Tom Delves reassured the Claimant that her current flexible working arrangements were due to expire on 22 April 2022, so would remain in place until that date, and that the application would be determined before that date as it would be determined within the legally required period of three months [168]. The Claimant was then absent from work due to sickness between 17 February 2022 and 1 March 2022 with the outcome of the flexible working application then being sent to her on 15 March 2022 [1022]. Thus, in the period of time which the Claimant complains of as amounting to delay, she did have flexible working arrangements in place. On the face of it, the timeframe within which the appeal was considered was not unreasonable. The Claimant received the outcome of her flexible working request on 15 March 2022. She submitted her appeal on 18 March 2022. A meeting to consider her appeal was held on 30 March 2022. She received a decision on 4 April 2022.

403. By reason of the matters aforesaid, the Tribunal dismissed the claimant's flexible working complaints made under ERA 1996 section 80H.

404. In addition to the limited right to bring a flexible working complaint based on one of the statutory grounds of complaint set out in ERA 1996 section 80H, clearly the Claimant can and has sought to rely upon the handling of, and decisions in respect of her flexible working applications as giving rise to other complaints within the jurisdiction of the Employment Tribunal, such as complaints in respect of discrimination or unfair dismissal (in so far as the Company's actions in dealing

with the flexible working application and appeal are alleged to have given rise to, or contributed to, a constructive dismissal taking place). As such, where the Claimant has placed such reliance upon the acts or omissions of the Respondents in relation to her flexible working application or appeal in support of other complaints, the Tribunal has dealt below with those aspects of those other complaints.

Indirect sex discrimination

405. The Particulars of Claim alleged that the Claimant was subjected to indirect sex discrimination "*when she was denied the flexible working request*" [25]. In the context of the Particulars of Claim, this was clearly referring to the flexible working request made in January 2022 [159-160]. For the purposes of this complaint, the Particulars of Claim stated that the Company had "*applied a provision, criterion or practice, namely that the role of Coordinator Engineer must be done from 8:30 until 17:00 and office-based*" [25]. It can be seen that the PCP which was being identified was one with requirements in respect of both working hours and location.

406. The Case Management Order of 24 August 2022 directed that the Claimant provide further information as to the PCP(s) in issue, as well as identifying the group and individual disadvantage upon which she relied [59].

407. The Claimant's Further Particulars [65] identified the PCP as being that the Company "*insisted that the role of Co-Ordinating Engineer must be done between 8.30 a.m. and 5.00 p.m. and/or is office based*" [65]. The group disadvantage was that "*women are less likely to meet such a working pattern due to childcare responsibilities*". The individual disadvantage relied upon by the Claimant was not specifically identified, save that she stated that the PCP placed her at a disadvantage "*when her flexible working request to work core hours in September 2020 was denied*" and in "*April 2022 the Claimant again suffered a disadvantage when her flexible working request to work permanently remotely four day a week was denied*".

408. It can be seen that the Claimant's Further Particulars focus on two different decisions by the Company at different points in time. The issue in dispute regarding the PCP in April 2022 was effectively different from the Claimant's issue with the PCP in September 2020. The Claimant's flexible working application in September 2020 had been granted in terms of working from home for four days a week, but her working hours were stated to be 8.30 am to 5.00 pm. Thus, the PCP in issue related to her working hours as her argument was that the same arrangements in respect of core hours should have applied as applied during her first period of maternity leave. By contrast, her flexible working application made on 4 January 2022 had been for home working four days a week on the basis of her working hours being 8:30 am to 5.00 pm, so that the only issue in respect of working hours related to the Claimant's request to work from 7.30 am until 3.30 pm (on the basis of reducing her lunch hour to 30 minutes) on the one day a week (Monday) when she was proposing to work from the office. In the flexible working meeting, the rationale for this was stated to be to avoid the rush hour when going into work and coming back but the Claimant agreed that she was "*flexible on that point*" and happy to work contractual hours on that day in the office [173]. Thus, the issue in

April 2022 (the date of the appeal decision) essentially related to the PCP in respect of working from the office.

409. In so far as the Further Particulars did not specifically deal with the requirements made in the Case Management Order to identify the individual or group disadvantage, the Claimant's case in her Particulars of Claim had been that the alleged PCP put women at a particular disadvantage compared to men because women are less likely to be able meet such a working pattern due to childcare responsibilities, and that she herself was put to this disadvantage [25].

410. The Tribunal considered first the position in respect of the PCP in issue. The Claimant's contractual working hours were set out in her initial letter of appointment to the position of CAD Coordinator [628] as being 8:30 am to 5.00 pm. The same letter of appointment identified the Company's office as her normal place of work. These contractual terms and conditions remained in place after her promotion to the position of Coordinating Engineer. They were amended as a result of the Claimant's first and second flexible working applications so that, for a period of twelve months following each return from maternity leave, she worked four days per week from home. During the first such period, arrangements were in place in respect of core hours which only required her to be available for four hours during normal working hours. The flexible working arrangements which applied during the second such period, as set out in the outcome letter dated 13 November 2020, were that the Claimant would work from home for four days a week and her "*daily working hours shall remain 8.30am to 5.00pm with a one-hour unpaid lunch break*". This letter provided for the arrangements to be in place for a period of twelve months following the Claimant's return from a second period of maternity leave [138]. This period of twelve months was due to end on 22 April 2022 [193]. On 4 January 2022 the Claimant made an application [159-160] for permanent flexible working arrangements to be put in place by which she was proposing to work from home between 8:30 am and 5.00 pm except on Mondays when she was proposing to work "*flexi hours*" in the office between 7.30 am and 3.30 pm. This application was unsuccessful, although the decision letter reminded the Claimant that, as an alternative, the Company "*has a Home Working Policy which allows you to work up to 2 days per week at home depending on your workload and subject to management approval*" [194]. In the event, on 22 April 2022, the Company agreed to the occupational health recommendation that the Claimant be allowed to work from home five days a week on a temporary basis while her grievance was resolved [880]. Although the Claimant was informed of the outcome of the grievance appeal on 9 June 2022 [1153], at the point when the Claimant was suspended, she was due to be returning to work on the basis of attending the office three times per week but had not yet done so.

411. It follows that, the Company did have a provision, criterion or practice in place by way of the contractual arrangements by which the role of Coordinating Engineer was office-based and / or involved working hours between 8:30 am and 5.00 pm subject to any alteration to those arrangements put in place by way of flexible working arrangements, or pursuant to occupational health advice or under the Company's Home Working Policy.

412. This was a PCP which applied to the Claimant and also applied to her male colleagues.

413. The Tribunal then considered whether the PCP put women at a particular disadvantage when compared with men, and, if so, the way in which this might be the case. For these purposes, all the workers affected by the PCP in question should be considered (see *Essop v Home Office (UK Border Agency) [2017] ICR 640, SC*). In general, therefore, identifying the PCP will also identify the pool for comparison (see *Dobson v North Cumbria Integrated Care NHS Foundation Trust [2021] ICR 1699*).

414. The PCP formulated by the Claimant was a PCP in respect of employees in the post of Coordinating Engineer. However, the Tribunal understood it to be the case that the same requirement in respect of working hours (subject to the possibility of varying those arrangements, whether under the Flexible Working Policy or otherwise) applied to employees in other posts, although the extent to which this was the case (or to which there were employees to whom these requirements did not apply) was not specifically established on the evidence before the Tribunal. Similarly, although the Company's Home Working Policy seemed to be based on the default position that employees would be attending the work base of the Company to work (albeit this might be varied to involve being on site or attending a client's premises, and, again, subject to the possibility of varying those arrangements, whether under the Home Working Policy or Flexible Working Policy or otherwise), the extent to which there might have been some employees working for the Company whose role did not require them to be office-based was not specifically established on the evidence before the Tribunal. That said, the Tribunal understood the evidence as being, broadly speaking, that the same position in respect of working hours and being office-based applied to all employees in the department in which the Claimant worked (subject to the demands of the job which might cause the employee to need to work from client's premises or from a building site).

415. The short point is that the Tribunal did not understand the requirements in issue to be limited to Coordinating Engineers so that the PCP itself was probably best formulated in terms of the requirement simply being that of having working hours between 8.30 am and 5.00 pm and / or being office-based. It further followed that, if the PCP of working 8.30 am to 5.00 pm and / or being office-based was not restricted to Coordinating Engineers, then any pool for the purposes of comparison should not be so restricted.

416. However, whether the pool was to be treated as that of Coordinating Engineers only, or the department in which the Claimant worked, or an even wider pool, there was no specific evidence before the Tribunal as to whether other individuals, whether male or female, within each possible pool, were placed at a disadvantage by the PCP, for the purposes of the Tribunal determining whether the PCP put women at a particular disadvantage compared with men. However, the Claimant is not necessarily required specifically to adduce evidence in support of her contention that there was group disadvantage. The particular disadvantage may be one in respect of which judicial notice may be taken.

417. The Claimant's case in the Particulars of Claim is that the PCP "*put women at a particular disadvantage compared to men because women are more likely than men to require flexibility in their working hours and patterns due to childcare commitments*" [25]. The group disadvantage was identified a little differently in the

List of Issues as being "*because women are less likely to meet such a working pattern due to childcare responsibilities*" [98]. However, it is not necessary to establish that women would not be able to meet a working pattern in terms of not being able to comply with it. The issue is one of being disadvantaged rather than not being able to meet a requirement.

418. In *Dobson v North Cumbria Integrated Care NHS Foundation Trust [2021]*, the Employment Appeal Tribunal held that the "*childcare disparity*" which it described as "*the fact that women bear the greater burden of childcare responsibilities than men and that this can limit their ability to work certain hours*" was a matter in respect of which judicial notice had been taken without further inquiry by Courts and Tribunals at all levels for many years and, as such, it fell into the category of matters that a Tribunal must take into account if relevant.

419. During the course of closing submissions, the Tribunal invited representations as to whether it should accept, by way of taking judicial notice of the "*childcare disparity*", that women were still more likely to suffer a disadvantage as a result of childcare responsibilities than men, and if so accepted, that the fact of this childcare disparity was relevant to the Claimant's case. Having considered such representations as the parties sought to make, the Tribunal accepts, by way of taking judicial notice of the fact, that there remains a childcare disparity by which women still bear a greater proportion of child caring responsibilities and accepted that this was relevant to the Claimant's case in that her case was essentially that the disadvantage arose from having to balance childcare responsibilities with work responsibilities. As such, having regard to the childcare disparity, the Tribunal accepted the Claimant's argument that the PCP in issue put women at a disadvantage compared to men because women are more likely than men to require flexibility in their working hours and patterns due to childcare commitments. The Tribunal was also satisfied that group disadvantage could be inferred from the individual disadvantage relied upon by the Claimant (see below) having regard to the fact that the Claimant's circumstances in having caring responsibilities for two small children were hardly unusual.

420. The Tribunal next considered whether the PCP put the Claimant at that disadvantage. This List of Issues identified the Claimant's case is being that she was put at that disadvantage because she is a woman [98].

421. The Tribunal accepted the Claimant's case that she was put at the disadvantage in issue, although it was insufficient to say that this was because she was a woman; rather, it was because of her childcare responsibilities. In the Particulars of Claim, the Claimant contended that disadvantage arose from having children under three years of age which required her to "*be able to be there for them a minimum number of hours a day*" [25]. She further relied upon the contention that working from the office involved her being away from home for a couple of hours either side of the working day in order to commute from work which made it "*impossible for her to take care of her children*". The Tribunal was concerned that this potentially involved overstating the position, in that the Claimant, on her own case, given the flexible working arrangements which she had at various points in time sought, was able to attend work on a Monday. The Tribunal was also concerned that, in reality, part of the disadvantage involved in the Claimant being unable to spend more time with her children was to do with the

distance the Claimant lived from work, but this is still a relevant disadvantage as a requirement in respect of being office-based during working hours would inevitably involve an employee having to travel to the office at either end of those working hours. The Tribunal accepted that having to attend work at the Company's office would make any childcare responsibilities more difficult to fulfil, so that alternative childcare arrangements would need to be made and these would need to cover not just any working hours but the time away from home. As such, the Tribunal accepted that the Claimant had established individual disadvantage for the purposes of her complaint.

422. On this basis, the Tribunal gave consideration as to whether the Company's defence of justification was made out in relation to the PCP. This involved the Tribunal needing to be satisfied that any PCP was a proportionate means of achieving a legitimate aim.

423. The position of the Company was that it was industry practice for working hours to be between 8.30 am and 5.00 pm and for the Coordinating Engineering role to be office-based, but it did not insist on it and there was the opportunity to make applications under the Flexible Working Policy "*which were objectively considered*" [98]. In the alternative, the First Respondent relied upon a defence of justification on the basis that that "*adopting the industry norm but allowing for objective consideration of individual requests under the Flexible Working Policy was a proportionate means of achieving the legitimate aim of operational needs and business efficiency*" [98-99].

424. Although put in fairly general terms, essentially it was the position of the Company that it was better able to run its business, and do business with its clients, and get the best out of its employees, if those employees worked the standard working hours within the industry, and were office-based for those hours, albeit subject to provision being made for alternative arrangements to be considered as appropriate (whether under the Home Working Policy, the Flexible Working Policy, or otherwise). In this context, the legitimate aim being relied upon by the Company was that of best fulfilling its operational needs and its requirements for business efficiency. Further or alternatively, the legitimate aim was effectively identified in the flexible working outcome letter [193] and the subsequent appeal outcome letter [290] by reference to (seeking to avoid) the detrimental effect on ability to meet customer demand, detrimental impact on quality and detrimental impact on performance that it was considered would be caused by the Claimant's flexible working request being allowed. Obviously, these are statutory grounds (provided for under ERA 1996 section 80G) upon which, where they apply, an employer can refuse a flexible working application.

425. On this basis, the Tribunal was satisfied that the aim of the PCP was legal and non-discriminatory, and was one that represented a real, objective consideration. Reasonable business needs and economic efficiency may amount to legitimate aims. In this sense, this was not an aim which was simply about seeking to reduce costs; rather, it was an aim which involved seeking to act in the perceived best interests of the Company in terms of ensuring the success of the business. As such, the Tribunal was satisfied that the aim of the PCP was a legitimate aim.

426. Having concluded that the aim was a legitimate one, the Tribunal had to consider whether it was satisfied that the means of achieving it were proportionate. This is a balancing exercise which involves evaluating the discriminatory effect of the PCP as against the Company's reasons for applying it having regard to the Tribunal's findings of fact.

427. The Tribunal accepted the Company's evidence as to its reasons for the application of the PCP, as also detailed in the flexible working decision letter [the bullet points set out at 194] and in the flexible working appeal decision letter [290-293], as well as in e-mail dated 30 July 2021 [699] which gave the reasons relied upon for declining the Claimant's request that her working hours revert to the core hours which she had worked after her return from her first period of maternity leave. The Tribunal concluded, for the reasons set out below, that the Company's reasons for the application of PCP corresponded to a real business need on the part of the Company.

428. Whether viewed at the point in time when the decision was made on the Claimant's second flexible working request (November 2020) which was when home working arrangements were in place as a result of the pandemic, or viewed at the point in time when the position was reviewed in respect of the Claimant's working hours (July 2021), the Tribunal was satisfied that it made business sense, in relation to the Claimant's role as a Coordinating Engineer, for her to be required to be available during normal working hours to assist and support the project team and also to work with the CAD team on project drawings, as explained in the e-mail of 30 July 2021 [699]. It was an important element of her role to be available during normal working hours to assist with any problems or queries raised by either the project team or CAD Coordinators. Implementing the core hours proposal would have reduced the time that the Claimant was available during normal business hours. The practicalities of the Claimant working core hours would have meant that she would have been unavailable for approximately half of the working day. The Tribunal accepted that this would have had the potential to have a negative impact on the work of the Claimant's department.

429. Viewed at the point in time of the Claimant's flexible working application in 2022, the Tribunal was satisfied that the Company was entitled to proceed on the basis of the analysis of the situation facing its business at the time of the Claimant's flexible working application which was that, by 2022, the Company's clients, and the industry in which it operated, had begun to move back towards "*business as normal*" so that there was an expectation on the part of clients and project teams that work activities would revert back to being held on a face-to-face basis in the office or on site, so that not meeting such an expectation would potentially have a detrimental effect on meeting client demands.

430. The Claimant's appeal had sought to challenge this analysis, as well as pointing out that there were senior engineers, such as Warren Mullem and Bhupinder Padda, who also worked from home for part of the week, and further suggesting that if it was necessary to attend a face-to-face meeting, then she would be willing to do so.

431. However, the Tribunal considered that the point made in the appeal decision letter [291] was clearly very valid, namely that although some projects might be

capable of being conducted remotely, this could not be guaranteed, particularly since it depended upon whether the client was happy to accommodate home working, and given that it was led by its clients' requests and requirements, the Company had to be in a position where it was capable of meeting those. Not being able to do so would clearly have had a detrimental effect on the Company being able to meet client demands. It seemed to the Tribunal that this need for flexibility in terms of meeting client demands involved rather more than being willing to attend a work-based meeting as and when necessary. In any event, there was a history of the Claimant showing an unwillingness to attend the office at the request of her managers and / or not accepting the basis of any such request, so that the Company would have been entitled to have been sceptical about the extent of the Claimant's willingness to agree to *ad hoc* alterations to working arrangements which had become permanent contractual working arrangements.

432. The fact that other engineers worked from home two days a week under the Company's Home Working Policy did not invalidate the analysis being relied upon by the Company, as working from the office for three days a week was significantly more than only doing so for one day a week. Moreover, these were home working arrangements which were under the Company's Home Working Policy which had been introduced at the time of the post-pandemic move back to being office-based by way of assisting such a return to office-based working arrangements. The Home Working Policy recognised the importance attached by the Company to office-based working whilst seeking to achieve a balance between office-based working and remote working on the basis that benefits were also derived from home working, not least in terms of work life balance. The other important point was that arrangements put in place under the Company's Home Working Policy were not permanent and were non-contractual so could be changed at short notice if the need arose.

433. The Tribunal was also satisfied that the Company was entitled to proceed on the basis of its analysis that the Claimant's role (as would also be the case with other roles within the department) required her to work closely with a project site team in the preparation of co-ordinated drawings which involved a requirement for close collaboration, co-operation and communication with project managers and other members of the project team regarding drawings and the provision of technical support, with it being envisaged that this would increasingly be required to be carried out at the office / site level and / or might not always be efficiently carried out through the use of remote communication with stakeholders. Thus, there was a legitimate concern that home working to the extent proposed by the Claimant posed a risk of detrimental impact on quality and performance.

434. Again, this was a position challenged by the Claimant in her appeal letter which sought to rely upon having undertaken such a role from home since 2019 without any detrimental impact upon her performance. However, the Tribunal accepted the analysis set out in the appeal decision letter, as confirmed by the evidence of Remi Suzan, that while there were elements of the Claimant's role which could be undertaken from home, working in the office more than one day a week would benefit the maintenance of working relationships and the development of engineering knowledge. The Tribunal considered that the points made by Remi Suzan, as recorded in the transcript of the flexible working appeal meeting, and as

set out in the Tribunal's findings of fact, and also confirmed by Remi Suzan in his evidence to the Tribunal [RS5], demonstrated that there had been a negative impact with the Claimant only working one day a week in the office. The Tribunal accepted his analysis which was that the Claimant lacked experience and knowledge of the engineering aspect of the role of Coordinating Engineer [262 and also RS5]. Moreover, she was not getting the experience and knowledge that she needed through working at home, so that working from home was holding her back in terms of job and career progression and resulting in her being "*given easier work simply to keep you busy*" [268]. The Company had not been in a position to give her larger projects such as a complicated office block or a data centre [263]. He explained that the nature of the work coming into the Company at that point in time, which he described in terms of involving "*engineering driven production within the drawings, and the management of the design and production of the drawings, not just production of the physical drawings themselves*" [263-264], had made it more difficult to use the Claimant remotely. He was also of the view, and the Tribunal accepted that it was a valid view to form, that the Claimant working from home had contributed to the breakdown in her working relationship with her managers. Certainly, it seemed to the Tribunal that successfully managing an employee who was working remotely from home depended upon there being the requisite level of trust in place, whereas, by contrast, it seemed that the Claimant had become distrustful of her managers and *vice versa*. This had contributed to a spiralling decline in the relationship between the Claimant and her managers. This was demonstrated by the Claimant being unwilling to accept direction from her managers in terms of when it would be of assistance for her to attend work. The Tribunal considered that such a situation significantly undermined the viability of home working in the Claimant's case.

435. Whilst much of the focus of the decisions made by the Company (and, indeed, the representations being made to the Company by the Claimant) was on the validity of the requirement to be office-based, the Tribunal was satisfied that the same analysis and same considerations largely applied to the issue of working hours. Any need or requirement for the Claimant to be office-based would be largely rendered otiose if this was not applied on the basis of being office-based during normal working hours. The Claimant was not seeking or suggesting that her working hours should be anything other than full-time working hours. Against this background, the Tribunal was not satisfied that shortening the working day through a shorter lunch break, or putting in place an earlier start so as to achieve an earlier finish, would be anything other than counter-productive since the rationale, as set out above, behind the Claimant needing to be in the office, would be largely undermined if she was not actually in the office during normal working hours. An earlier start would simply have resulted in the Claimant being in the office when other members of the team were not in the office, whilst an earlier finish would have had the reverse effect so that the Claimant would not have been there when she might be needed, whether by other team members or by clients. In any event, as the Tribunal understood the position, the Claimant would have needed breaks during the working day whilst she was still expressing milk, which meant that there was less scope shorten the working day in terms of the start and finish time.

436. On the basis of the Tribunal's conclusions that the application of the PCP was based on a real business need, it was then necessary to consider the

seriousness of any disparate impact of the PCP on those sharing the relevant protected characteristic, including the Claimant.

437. Whilst the Tribunal has accepted, based upon having taken judicial notice of the childcare disparity, the Claimant's case as to group disadvantage, on the basis that the PCP in issue put women at a disadvantage compared to men, because women are more likely than men to require flexibility in their working hours and patterns due to childcare commitments, the Tribunal was not referred to significant evidence of the PCP having had an adverse impact on other female workers to whom it applied. The PCP had clearly been implemented by the Company on the basis that it was open to any employee to seek to vary the requirements in respect of working hours or office-based working, by making a request under the Home Working Policy or by way of an application under the Flexible Working Policy of the Company. The Tribunal was not specifically referred to evidence of other applications or requests having been refused. The wording of the Flexible Working Policy was to the effect that each "*case will be considered on its own merits taking into consideration the business case, possible impact and the current business context*" [113]. Similarly, the Home Working Policy set out a default starting position whereby employees might be allowed to work from home two days per week but made it clear that "*each request will need to be considered individually*" [213]. As such, clearly the Flexible Working Policy and the Home Working Policy provided the potential for any discriminatory impact to be removed or ameliorated in circumstances where there was a discriminatory impact. This would clearly depend upon the balancing exercise involved in the position being considered under either of those policies.

438. As far as the discriminatory impact on the Claimant was concerned, the Tribunal accepted the Claimant's case that she was put at the disadvantage in issue because of her childcare responsibilities, in particular her responsibilities to two children who were under school age. This was on the basis that the Tribunal having accepted that these child caring responsibilities would be easier to fulfil if the Claimant was working from home and / or working core hours only (as described above) rather than 8.30 am to 5.00 pm and / or, if working from the office, with working hours which enabled her to have an earlier start and / or finish.

439. The Tribunal accepted that home working was advantageous to the claimant in terms of being more conducive to fulfilling her caring responsibilities as a mother. However, the Tribunal found the Claimant's evidence was either unreliable and / or overstated the position in terms of the extent of any discriminatory impact given that:

(1) she had long been able to attend the office for normal working hours on a Monday;

(2) it was clear that, even when home working arrangements were in place, she could make arrangements, subject to notice, to attend the office on days other than Monday, and when it suited her, expressed her willingness to do so, such as in the appraisal appeal meeting [274];

(3) in the flexible working meeting on 21 October 2020, the Claimant had confirmed that she had childcare arrangements in place during normal working hours, as recorded in the outcome letter of 13 November 2020 [138];

(4) although the Claimant later seems to have sought to backtrack on this in her e-mail of 3 August 2021 to Tom Delves after the appraisal meeting [156], a near contemporaneous e-mail from Tom Delves to Glenn Sheldrake sent on 26 October 2020 [136] noted that the Claimant had confirmed her ability to meet her working hours of 8.30 am to 5.00 pm and had "*confirmed childcare arrangements are in place and will not affect her hours or ability to meet the requirements of her work*";
(5) when the Claimant had been asked for confirmation of the arrangements in place by the manager, Paul Starkey, on 3 August 2021 she had not replied to his e-mail on the basis of asserting that he had no legal right to ask about "*my private life*" [153];
(6) during cross-examination on behalf of the Respondents, the Claimant took issue with the suggestion that she was seeking to work from home as a way of avoiding the cost of childcare during working hours, by confirming that her son was in nursery and her other child was with her mother-in-law who was a neighbour and able to take her older child to nursery (which was evidence, as pointed out by Mr Husain in closing submissions, which appeared to be inconsistent with the position being put forward by the Claimant in the 3 August 2021 e-mail);
(7) there was a Home Working Policy in place under which she could seek managerial approval to work in two days a week at home (indeed, the wording of the Policy did not itself exclude the possibility of working from home for more than two days a week);
(8) her husband worked in the same department so could also have sought, under the Home Working Policy, to work from home on two separate days from the Claimant;
(10) in the flexible working meeting on 2 February 2022, although the Claimant had requested hours of work between 7:30 am and 3:30 pm, she was recorded as having stated in the meeting that she would "*accept 8:30 am to 5.00 pm as your hours if this was a problem*" [1114].

440. Proportionality requires a balancing exercise with the importance of the legitimate aim being weighed against the discriminatory effect of the treatment. As already discussed, the application of the PCP by the Company did itself involve a balancing exercise between the needs of the Company and the needs of the employee with the Home Working Policy and the Flexible Working Policy being but two possible routes by which such a balancing exercise could be achieved.

441. It is clear that the Company was willing to consider alternative less discriminatory arrangements than the default arrangements (in other words, the PCP) which potentially applied as a result of the flexible working request and appeal being unsuccessful. In the course of the flexible working meeting on 2 February 2022, the Claimant was specifically asked if there was "*any kind of other alternative that would work for you*" [176], but did not put forward any alternative request to be considered, either in the meeting, or in her subsequent appeal letter, or in the appeal meeting, other than raising the possibility of her request being agreed to for a fixed period. However, in the flexible working decision letter [194-195], the Company put forward the alternative suggestion of the Claimant taking advantage of the Home Working Policy on the basis that this would allow her to work two days per week at home depending on her workload and subject to

management approval. This was not taken up by the Claimant, though effectively making a request under the Home Working Policy remained available to her. It is also to be noted that, in the flexible working appeal meeting on 30 March 2022, it was made plain on behalf of the Company that separate consideration would be given to giving effect to the occupational health recommendation that the Claimant work from home full time on a temporary basis while at her grievance was resolved [277], and this was subsequently considered, with the recommendation being implemented.

442. In these circumstances, having evaluated the real business need and the discriminatory effect, as above, the Tribunal was satisfied that the Company's real business need was sufficient to outweigh the discriminatory impact on the employee. On this basis, the Tribunal was satisfied that the PCP was both an appropriate means of achieving the legitimate aim and reasonably necessary in order to do so. As such, the Tribunal concluded that the Company's means of achieving its aim were proportionate, with the disadvantage caused to the Claimant outweighed by the needs of the business.

443. By reason of the matters aforesaid, the Tribunal accepted the defence of justification so that the complaint of indirect sex discrimination did not succeed.

444. The Further Particulars at paragraph 15 [70] and paragraph 15(f) and (g) [71] had sought to add the Second and Third Respondents as Respondents to the complaint of indirect sex discrimination, although the complaint was essentially set out in the same basis as the complaint against the company, but without the basis for the Second and Third Respondent also being alleged to be liable being made clear. In the event, on the basis the conclusions set out above, any complaint of indirect discrimination against the Second and Third Respondents would also fail and is also dismissed.

Victimisation.

445. Although victimisation was referenced in the heading of the Particulars of Claim [14] and in the prayer setting out the remedies being sought by the Claimant [32], the extent to which the Particulars of Claim specifically complained of victimisation or specifically identified the treatment which the Claimant was complaining of as amounting to victimisation was very limited.

446. A specific complaint of victimisation was identified to the effect that the "*investigator was not impartial, and he seemed to have his mind made up prior the appeal meeting started*" so that the "*Claimant feels that she was being victimised for raising a grievance complaint*" [23]. Similarly, a specific complaint was identified to the effect that "*the Claimant believes that the fact that the investigator had his mind made up prior to the commencement of the meeting, is a consequence of him discussing confidential information with Glenn Sheldrake and Paul Starkey*" so that the "Claimant feels that because she has raised a grievance, she was victimised during the appeal process" [24-25].

447. From the context of both of these complaints, the Claimant was referring to her flexible working appeal in respect of which she was describing the decision maker, Remi Suzan, as the "*investigator*".

448. The Case Management Order of 24 August 2022 [59] ordered that the Claimant should set out the specific protected acts which will being relied upon for the complaint of victimisation and the "*detriments because the Claimant had done a protected act*" [59].

449. The Claimant's Further Particulars identified the protected act as being the Claimant's complaint of discrimination and harassment in her grievance dated 1 March 2022 [65]. The Further Particulars also stated that the "*Claimant reported complaints of discrimination to ACAS Early Conciliation on 23rd May 2022 whilst still employed by the Respondent*" [65]. The Tribunal concluded that this was clearly a mistake as to the date of the notification being made to ACAS as to the prospective Claim, since the ACAS certificate clearly records the date as having been 23 March 2022 [1]. The Particulars of Claim had made the same mistake as to the date of notifying ACAS [28] but had not alleged the act of contacting ACAS had resulted in the Claimant being victimised.

450. The Further Particulars then set out the "*detriments suffered by the Claimant as a result of the above protected acts*". The alleged detriments were listed as (a) to (c) [66]. The first alleged detriment listed as (a) was the refusal of the Claimant's flexible working application of January 2022 and appeal submitted on 18 March 2022. This was alleged to amount to victimisation on the basis that "*the Respondent was choosing to treat the Claimant less favourably because she had raised a formal grievance complaint on the 1st March 2022*". The second alleged detriment, listed as (b) was suspending the Claimant on 8 July 2022 which was alleged to have been because she had "*reported her complaints to ACAS Early Conciliation*". Obviously, the alleged detriment postdates the ET1 Form of Claim. The third alleged detriment, listed as (c) was stated to be the "*Respondent's decision to carry out an investigation surrounding the employer/employee relationship*", although, in contrast to the particulars given as to the first two alleged detriments, the protected act relied upon for the purposes of this alleged detriment was not specifically identified. However, clearly this alleged detriment also postdated the ET1 Form of Claim.

451. Although the Claimant had been given permission to amend her Claim, this was limited to amending her Claim so as to add the complaints of unfair dismissal and in relation to the notice pay.

452. In the circumstances, the Tribunal was not satisfied that the detriments listed as (b) and (c) formed part of the Claimant's case which the Respondents had to meet, or upon which the Tribunal had to adjudicate.

453. These three alleged detriments were also listed as (a) to (c) in the List of Issues [102]. However, the Claimant also appears to have added four further alleged detriments to the list of issues as (d) to (g). Clearly, these were not detriments that the Claimant had been complaining of as victimisation when seeking to comply with the requirements in the Case Management Order to identify the detriments relied upon as victimisation.

454. The complaint involved in detriment (d) is dealt with separately below. The Tribunal was not satisfied that the detriments listed as (e) to (g) formed part of the Claimant's case which the Respondents had to meet, or upon which the Tribunal

had to adjudicate. The Particulars of Claim had not identified the detriments relied upon as amounting to victimisation. The Claimant had been ordered to particularise any complaints. In providing the Further Particulars, she had not identified these further alleged detriments at (e) to (g) as being part of her case. She did not have permission to add further complaints of victimisation.

455. Alternatively, and in any event, the Tribunal was not satisfied that the complaints of alleged victimisation were well-founded, for the reasons set out below in dealing with each individual complaint.

(a) *"The Claimant's appeal for flexible working dated 4th January 2022 was denied on 15th March 2022 and following appeal on 18th March 2022. This amounted to victimisation as the First Respondent was choosing to treat the Claimant less favourably because she had raised a formal grievance complaint on the 1st March 2022".*

456. The Tribunal has already concluded, in dealing with the Claimant's complaints under the statutory provisions in respect of flexible working and in dealing with her complaint of indirect sex discrimination, that the Company (through Paul Starkey and Tom Delves who dealt with the flexible working request and through Remi Suzan and Oliver Dawson who dealt with the flexible working appeal) dealt with the Claimant's flexible working request and appeal in good faith. The Tribunal was satisfied that, in putting forward their reasons for the respective decisions, the decision makers arrived at decisions which they genuinely believed were in the best interests of the Company. The Tribunal was satisfied that the decisions were not as result of any hidden agenda to victimise or penalise or single out the Claimant for having raised a grievance.

457. Contrary to the Claimant's case that, in arriving at the decisions which they did on the flexible working request and appeal in 2022, the decision makers were motivated, consciously or sub-consciously, to victimise her, the Tribunal was satisfied that the Claimant was not being singled out but was being treated in a way which was consistent with the position which the Company was adopting regarding home working. It is fair to say that the request and appeal were considered at a point in time when the Company was seeking to get back to the "*normal working*" arrangements which had existed within the Company prior to the pandemic. For example, in the flexible working meeting on 2 February 2022, Tom Delves stated that "*I think there is sort of now a pretty concerted drive to resume almost normal working*" so "*attendance on site will look to pick up*" [175]. Similarly, in the flexible working appeal, Remi Suzan referred to the "*Company's vi*ew" that there were benefits to having staff in the office regardless of whether there was a specific reason for them to be in the office [274].

458. It is also noteworthy that a number of the Claimant's complaints seek to suggest that there was a lack of impartiality on the part of Remi Suzan and / or that he sought to prejudge the outcome of the appeal, with these contentions being put forward on the basis of comments made by Remi Suzan which the Claimant is effectively suggesting were indicative of a mindset which was not favourably disposed towards her working from home. However, the reason for this alleged lack of impartiality supposedly stemming from the Claimant's grievance was not

really explained. It is certainly the case that Remi Suzan made comments in the course of the flexible working appeal which suggested that he believed that the home working arrangements which had been in place had contributed to the deterioration in the Claimant working relationship with her managers. The Tribunal has already indicated that this was a valid consideration in that there was a clear issue as to whether home working arrangements were viable if there was an absence of trust between the Claimant and her managers. The Tribunal also considered that it was understandable that Remi Suzan should be concerned that the home working arrangements in place had contributed to this breakdown in trust. In this regard, it could be said that the complaints being made by the Claimant in her grievance were indicative of that relationship having deteriorated. However, that is not to say that the grievance itself was the "*reason why*", or part of the reason for, the decisions which were made. It was not an effective and substantial cause of the treatment. The Tribunal was satisfied that it did not form part of the conscious or sub-conscious motivation of the decision makers. Their motivation was that they considered that it was in the best interests of the Company to refuse the request and appeal.

(b) *"The First Respondent's decision to suspend the Claimant on full pay was an act of victimisation".*

459. For the reasons already set out, this is a complaint which post-dates the ET1 Form of Claim and is not covered by the limited permission which the Claimant had to amend her Claim to bring subsequent complaints.

460. Alternatively, and in any event, for the further reasons set out below, the Tribunal was not satisfied that the suspension of the Claimant amounted to an act of victimisation for having provided notification to ACAS (which would then have been communicated to the Company) of the prospective complaint of discrimination.

461. The Tribunal relies upon its conclusions as to the reasons for suspending the Claimant which are set out further below in dealing with the complaint that the suspension amounted to an act of harassment related to sex (complaint (h) in the list of complaints of harassment related to sex [101]. Those same conclusions as to the reasons for the suspension are relevant to this complaint of victimisation.

462. It is significant that the Claimant was not suspended at the point in time when she gave ACAS notification of the prospective Claim which was on 23 March 2022, or when ACAS issued the early conciliation certificate on 3 May 2022, or when she filed her ET1 Form of Claim on 8 June 2022. However, at the point in time of the Claimant's suspension on 8 July 2022, the Company was clearly concerned that the point had been reached where the relationship between the Claimant and her managers had broken down so as to give rise to an issue regarding the viability of her continued employment. If the situation was one where the employment relationship had irretrievably broken down, then this might have provided grounds to terminate the Claimant's employment. It seems that the Company was being advised that giving consideration to this option would necessitate undertaking an investigation. For the purposes of such an investigation, it is also clear that the Company decided that it was appropriate to suspend the Claimant. The explanation for the timing of instigating this

investigation and suspending the Claimant was that, by 8 July 2022, it had become clear that the alternative option of exploring some kind of settlement, which might have provided for consensual severance terms, was unlikely to come to fruition. In the circumstances, the reasons for the suspension were that (1) in the absence of any other solution having been found, the Claimant would be due to be coming back to work in the workplace, (2) whether the Claimant was working from home, or attending the workplace, a situation in which the Claimant was back at work, was potentially untenable if the basis for that investigation, namely the employment relationship broken down, was well-founded, (3) the Company considered that it was appropriate, given that the nature of the investigation and possible outcomes, for such an investigation to be carried out without the Claimant being at work.

463. Clearly, had the Claimant's working relationship with her managers and her employment relationship with the Company been entirely problem free, then she would presumably have not been in the position of notifying ACAS of a prospective Claim. However, the applicable test for causation in a victimisation case is not a "*but for*" test. Applying the applicable test, the ACAS notification was not itself the "*reason why*", or part of the reason for, the decision to suspend the Claimant. The Tribunal was satisfied that it was not an effective and substantial cause of the treatment. The Tribunal was satisfied that it did not form part of the conscious or sub-conscious motivation of the decision makers. The motivation was that it was considered that undertaking an investigation whilst the Claimant was not in the workplace was the best way of seeking to identify a solution to the concerns which had arisen regarding the possible breakdown in the employment relationship between the Claimant and the Company.

(c) "*The First Respondent's decision to carry out an investigation surrounding the employer/employee relationship was an act of victimisation".*

464. For the reasons already set out, this is another complaint which post-dates the ET1 Form of Claim and is not covered by the limited permission which the Claimant had to amend her Claim to bring subsequent complaints.

465. Alternatively, and in any event, the Tribunal was not satisfied that the instigation of the investigation in issue amounted to an act of victimisation for having provided notification to ACAS of the prospective complaint of discrimination.

466. The Tribunal relies upon its conclusions set out above in dealing with the Claimant's complaint that her suspension amounted to victimisation on the basis that those conclusions also effectively set out the reasons for instigating the investigation. In short, the investigation was instigated because the Company had been concerned that the seemingly intractable nature of the difficulties which had arisen in respect of the Claimant's working relationship with her managers raised the possibility that the employment relationship between the Claimant and the Company had irretrievably broken down. Such concerns, if well-founded, might potentially have provided grounds upon which the employment relationship could have been terminated. The Company had clearly been advised that, if consideration was to be given to such a step, then it would be necessary to undertake a proper procedure and investigation for the purposes of considering those concerns and any appropriate action. The Tribunal was satisfied that the concerns which prompted the investigation were genuine concerns. The point had

been reached where the Claimant's working relationship with her managers appeared to be dysfunctional. It was understandable that this gave rise to concerns regarding the viability of the employment relationship between the Claimant and the Company continuing. The fact of the Claimant having previously notified ACAS of a prospective Claim was not the "*reason why*" the step of instigating the investigation was taken.

(d) "*The Claimant was not provided with a fair and / or an impartial investigation*"

467. Detriment (d) was described in the List of Issues as not being provided "*with a fair and/or impartial investigation*" [103]. Although this referred to an investigation in the singular, the investigation which it was being alleged had not been fair or impartial was not identified. With one exception, the allegations of a lack of impartiality in the Particulars of Claim had been in relation to the conduct of the flexible appeal meeting.

468. In so far as the Particulars of Claim did suggest that any alleged lack of impartiality and / or any alleged prejudging of the flexible working appeal had amounted to victimisation, the Tribunal has already set out its conclusions as to the relevant factual circumstances involved in the Claimant's complaints of an alleged lack of impartiality and / or an alleged prejudging the outcome of the appeal in dealing with the Claimant's complaints brought under the statutory provisions in respect of flexible working (see above). The Tribunal has also set out its conclusions as to the reasons for the treatment of the Claimant, on the part of Remi Suzan, in rejecting her flexible working appeal in considering the complaint of victimisation (listed as (a) above) arising out of that decision. On the basis of those conclusions, the Tribunal is satisfied that the Claimant's protected act in submitting a grievance (and /or any protected act in giving notification of a prospective Claim to ACAS) was not the "*reason why*", or part of the reason for Remi Suzan having dealt with the Claimant's flexible working appeal in the way which has resulted in the Claimant complaining of a lack of impartiality and / or the decision being prejudged. The protected act was not an effective and substantial cause of the treatment. The Tribunal was satisfied that it did not form part of the conscious or sub-conscious motivation of Remi Suzan. His motivation was that he considered that it was in the best interests of the Company to refuse the appeal.

469. The Particulars of Claim did also state that as "*of today 7th of June 2022, the Claimant still has not received an outcome of her appeal for the grievance*" and complained that "(n)*ot only the Respondent has failed to do an impartial and fair hearing, but has also failed* (to) *answer to the Claimant within 3 months stated by ACAS*" [26] (which appeared to be referring to the passage of time since the grievance itself had first been submitted on 1 March 2022, although the Claimant's grievance appeal letter was dated 21 April 2022). In fact, the Claimant had attended grievance investigation meetings in relation to her appeal with an external consultant, Sharlene Browne, on 3 and 4 May 2022 [C85]. In so far as she was complaining about any lack of progress after those dates up to the point in time when she completed drafting the Particulars of Claim on 7 June 2022, it is to be noted that she had been signed off work from 10 May 2022 until 6 June 2022.

470. Although the Particulars of Claim had made these criticisms about the handling of the grievance appeal, it had not alleged that these failings amounted

to victimisation and nor did the Further Particulars. As such, the Tribunal was not satisfied that such a complaint of victimisation arose in this case in the sense of amounting to a complaint which the respondents were required to meet and in respect of which determination was required from the Tribunal.

471. However, in any event, and / or in the alternative, the Tribunal was not satisfied that any such complaint was well-founded. The complaint in the Particulars of Claim was that a fair and impartial hearing (presumably to deal with her grievance appeal) had not taken place. The grievance procedure of the Company [116] simply provided for there to be a meeting where the employee appealed against a grievance decision. There had been such a meeting, in that the Claimant had met with Sharlene Browne. Her Statement of Evidence does not make any criticism about the meetings on 3 and 4 May 2022 [C85]. Thereafter, the Claimant would have been aware of Carl Tudor, from the same external consultants, Croner Face2Face, having taken over the investigation of the grievance appeal due to a personal emergency [C85 and 936]. It seems clear to the Tribunal that Croner was also advising the Company on dealing with the situation arising from the concern of the Company that there had been a breakdown in the employment relationship. As a result, Carl Tudor was clearly briefed about the situation by Tom Delves and Angela Foster in a video meeting on 17 May 2022 [937] following which he had a telephone conversation with the Claimant "*about what she wanted and moving things forward*" in the course of which he clearly explored whether the Claimant was receptive to a settlement involving agreed severance terms. In the course of this conversation, as described in his e-mail reporting back to Tom Delves and Angela Foster [936] he clearly described one possible outcome, in the event that an agreement could not be reached, which was that an employer "*can dismissed if they deem the working relationship is irretrievable*". In her Statement of Evidence, the Claimant suggested that these actions on the part of Carl Tudor "*don't show impartiality*" [C86]. However, the Tribunal was satisfied that the reality of the situation was that, in addition to his role in investigating grievance appeal, Carl Tudor was also acting as a go-between to enable the Company to explore potential settlement options. If it was considered that a frank discussion by way of exploring such options would be useful, then it probably made sense for such a discussion to take place through a third party rather than, for example, Tom Delves or Angela Foster seeking to discuss the position of the Claimant. The Claimant herself had commenced the process of early conciliation on 3 May 2022, so she can hardly have been surprised that the Company was seeking to explore possible resolutions with her. Part of exploring settlement as a possible option potentially involved discussing other potential outcomes if settlement was not reached. In the event, as the Claimant's responses to Carl Tudor suggested that a mutually acceptable settlement was unlikely, he was instructed to proceed with the grievance appeal investigation. These instructions were confirmed in an e-mail from Angela Foster on 18 May 2022 [935] which stated that "*we would like you to go ahead and close out the grievance*" and once "*that has been concluded we can re-visit how she will exit the business*". Carl Tudor subsequently proceeded with the grievance appeal investigation by interviewing other relevant witnesses and providing a grievance appeal report dated 8 June 2022, which the Claimant had not yet received this when she filed her ET1 Form of Claim with the Tribunal on 8 June 2022. Whilst the grievance appeal report recommended that the grievance appeal should be dismissed, the

report set out a thorough and detailed investigation and analysis of the issues. It is also significant that, far from providing an outcome which might have been seen as seeking to facilitate "*how she will exit the business*", the report recommended that consideration be given to arranging mediation so as to restore a professional working relationship between the parties [391].

472. In considering the Claimant's criticisms regarding the involvement of Carl Tudor and his alleged lack of impartiality, it is important to reflect on the nature of his involvement. This was a grievance appeal investigation. Ordinarily, a grievance appeal would be dealt with by an employer, rather than by a third party. In this case, the Company chose to instruct external consultants. It was also using those external consultants to seek to resolve the workplace issues which undoubtedly existed. On the face of it, this involved there being a greater level of impartiality in the grievance appeal process than would potentially have been the position if the Company had arranged for a senior manager or director to conduct the grievance appeal.

473. Ultimately, the Tribunal was satisfied that the investigation of the Claimant's grievance appeal was undertaken, in good faith, so as to seek to deal with the issues which had been raised and to arrive at a resolution. In instructing a third party to deal with the grievance appeal investigation, there was no guarantee that this would result in a recommendation that the grievance be dismissed. The investigation of the Claimant's grievance appeal, and the way in which it was investigated, were not, in themselves, acts of victimisation, so as to victimise the Claimant for having submitted a grievance (or notified ACAS). The protected act was not an effective and substantial cause of the treatment, and that treatment was not consciously or sub-consciously motivated by the protected act.

(e) "*The Claimant was put under unnecessary stress that ended up damaging her mental health*".

474. For the reasons already set out above, the Tribunal was not satisfied that this alleged detriment (in common with (f) and (g)) formed part of the Claimant's case which the Respondents had to meet, or upon which the Tribunal had to adjudicate. The Particulars of Claim had not identified this detriment as amounting to victimisation. The Claimant had been ordered to particularise her Claim further. In providing the Further Particulars, she had not identified this alleged detriment as being part of her case. She did not have permission to add further complaints of victimisation. The Tribunal also concluded that the complaint was so generalised that it could not properly be responded to by the Respondents or adjudicate upon by the Tribunal.

475. In any event, it seemed to the Tribunal to be likely that, in adding this further alleged detriment to the List of Issues, the Claimant was conflating liability and remedy issues. Further or alternatively, it seemed possible that she was interpreting a detriment in the same way as a loss or an injury (this was even more the case with detriment listed as (f) below). Liability in employment law, for having caused any alleged stress, or damaged mental health (or injury to feelings) had to be established in the first place.

476. Further or alternatively, on the basis of the Tribunal's findings of fact and conclusions in relation to the Claimant's other complaints, as set out in the List of Issues, the Tribunal did not accept the premise involved in this complaint, namely that the Claimant was put under unnecessary stress. In the alternative, if the Claimant was put under unnecessary stress, the Tribunal was not satisfied that her grievance, or the notification provided to ACAS, was the reason for any such treatment. The protected acts were not an effective and substantial cause of the treatment. The Tribunal was satisfied that the protected acts did not form part of the conscious or sub-conscious motivation involved in any such treatment.

(f) "*The Claimant suffered injury to feelings*".

477. Again, it needs to be remembered that this complaint, which derives from the List of Issues, was being put forward in the List of Issues as a complaint of victimisation. The Tribunal concluded that the complaint should be dismissed for the same reasons as set out above in relation to the alleged detriment listed as (e). Additionally, the Tribunal was not satisfied that a complaint of victimisation was disclosed at all in relation to (f), as it simply amounted to an assertion that the Claimant sustained injury to feelings, without specifically complaining about any act or omission on the part of the Respondents.

(g) "*The Claimant was not allowed to communicate with any of her work colleagues for no valid reason*".

478. This complaint refers to an instruction within the suspension letter to the effect that, while suspended, the Claimant should not make contact with any member of the Company's staff without permission from Angela Foster or a more senior manager. The letter told the Claimant that if she had any queries, she should contact Angela Foster.

479. Clearly, the complaint is in relation to a letter to the Claimant which was dated 8 July 2022 and so post-dated the ET1 Form of Claim. As such, the Claimant did not have permission to add a complaint of victimisation in relation to matters which post-dated the ET1 Form of Claim. Thus, for the reasons previously discussed, the Tribunal was not satisfied that this was a complaint which was before the Tribunal.

480. In any event, further or alternatively, the Tribunal was satisfied that any such complaint was not well-founded. The Claimant also complained about this instruction as amounting to direct age discrimination (listed as (g) in the complaints of direct age discrimination), and the Tribunal has set out its detailed conclusions as to the relevant factual circumstances regarding this instruction, and the reasons for it. On the basis of those conclusions, the Tribunal was also satisfied that neither the Claimant's grievance nor the notification provided to ACAS, were the reason for this instruction in the suspension letter. The protected acts were not an effective and substantial cause of the treatment. The Tribunal was satisfied that the protected acts did not form part of the conscious or sub-conscious motivation on the part of Angela Foster in including this instruction in the letter of suspension. involved in any such treatment.

Direct age discrimination

481. The Tribunal dismissed the complaints of direct age discrimination for the reasons set out below.

482. The actual complaint of direct age discrimination which was made in the Particulars of Claim was that other "*people in the Company, older than the Claimant,* (are) *allowed to work from home on a permanent basis*" [24]. Clearly, the context or premise of the complaint was that the Claimant had not been allowed to work from home on a permanent basis as a result of the decision on her flexible working request and appeal. This was effectively the only specific complaint of direct age discrimination (or any discrimination based on age) made in the Particulars of Claim.

483. The Case Management Order had ordered that the Claimant further particularise any complaint of direct age discrimination. The Claimant was ordered to identify her age group, the comparator age group, the acts or omissions claimed to amount to less favourable treatment on the grounds of age and the names of any actual comparators as well as "*why and how they are comparators*" [58].

484. The Further Particulars [62] were to the effect that the Claimant described herself as "*in her 30's*" and "*in an age group of employees with at least 30 years' service until likely retirement date*". The Claimant compared her treatment to "*an age group that is closer to retirement age*". The specific act or omission about which the Claimant was complaining was the "*act of refusing remote working on the basis of the Claimant was "too young"*". It was stated that other "*older comparators have been permitted to work from home*" with the names given being those of Peter Dibbens and Karl Doyle.

485. It follows that the Claimant's pleaded case in respect of age discrimination is that remote working was refused because she was too young which involved treating her less favourably than Peter Gibbons and Karl Doyle who were permitted to work from home.

486. In making this complaint, the Claimant alleged in the Particulars of Claim that Remi Suzan had said to her "(l)*et's be honest Marta, you are still too young and you still have ahead of you at least 30 years of service for the Company, so we cannot grant you to work from home 4 days a week* (on) *a permanent basis because we don't know what is going to happen in the next 30 years*" [23]. In fact, the specific issue taken with the comments supposedly made by Remi Suzan was that the Claimant stated that it showed a lack of impartiality and / or it showed that the outcome of her appeal had been prejudged [24]. This complaint has been dealt with in the course of dealing with the part of the Claimant's case which raises complaints under the statutory flexible working provisions. The Tribunal rejected the complaint that the comments showed a lack of impartiality and / or involved prejudging the Claimant's appeal. Clearly, the conclusions arrived at in dealing with the complaint under those provisions, and the reasons given for those conclusions, are also applicable in so far as any alleged lack of impartiality or any alleged pre-judgement of the outcome form part of any complaint of age discrimination.

487. The comments quoted in the Particulars of Claim as having been made by Remi Suzan, as set out in the paragraph immediately above, appeared to be another example of the Claimant paraphrasing comments from a meeting in order

to be consistent with her perspective or suit her case. Whilst the wording used in the Particulars of Claim appeared to be in the form of a quotation, the precise words of the quotation are not to be found in either the transcript of the meeting, or the Claimant's note of the meeting, or the note of the meeting produced by the Respondent.

488. The Tribunal's findings of fact have identified the passage in the transcript of the meeting to which the Claimant must be referring. The findings of fact have sought to set out the context as well as the exact words used.

489. The significance of the alleged comments which the Claimant attributes to Remi Suzan is that the Claimant is putting forward her complaint of age determination not just on the basis that she was treated less favourably than older comparators, but on the basis that the assertion that the less favourable treatment was on the grounds of her age is supported by the supposed fact of the comments made by Remi Suzan which involved saying that she would not be allowed to work from home permanently because she was "*too young*".

490. As stated, the Tribunal's findings of fact have set out the actual words used by Remi Suzan as recorded in the transcript of the recording of the flexible working appeal meeting. He did not use the words "*too young*". They do not appear either in the note of the meeting produced by the Company [242-250] or the Claimant's note of the meeting [251-255]. Effectively, this is the Claimant's interpretation of what was said by Remi Suzan. The origin of the interpretation can be seen in what the Claimant told Tom Delves in the meeting to discuss the occupational health report on 22 April 2022. The note taken of the meeting was that "*MS stated that Remi S. said that she was too young and that they could not let her work from home as she still had 30 years ahead of her to work for the Company*" [288]. In fact, this was another meeting recorded by the Claimant and the transcript of the meeting records that she told Tom Delves that Remi Suzan had said "*I won't be able to grant you this to work for years, four days home for the rest of the time* (because) *you are really young and because you are really young, you still have at least 30 years ahead of you to work for the Company* (and) I don't know what is going to happen in the future" [877].

491. However, it can be seen that the actual comments of Remi Suzan loosely referred to the Claimant still having "*20 years of work, 30 years of work ahead of you*" [266]. The point can be made that a comparator in his or her mid-40s would also potentially still have 20 years of working life left. However, the point that Remi Suzan was making was not really in relation to the Claimant's age, but in relation to the permanent nature of the flexible working application that she was making, which was an application to put in place permanent home working arrangements. The difficulty he had with a permanent application was that "*it might not be like that in six months…. it might not be like that in two years, three years, four years, five years, 10 years, 15 years, 20 years*". Clearly, that difficulty or objection might equally well have applied to an employee in the comparator group relied upon by the Claimant in that they could be granted flexible working arrangements based on the situation at the time, only for the Company to find that the situation had changed in as little as two years. In short, the point being made by Remi Suzan was not that the Claimant was too young but that any change which he made now was

permanent whereas the situation might change so as to be completely different over the period of time that the change was in place.

492. For the purposes of her direct age discrimination complaint, the Claimant had identified actual comparators, Peter Dibbens and Karl Doyle, who she stated were older than her, although the Tribunal did not have confirmation as to their age. However, the Tribunal was satisfied that the circumstances of these two individuals were completely different in that Peter Dibbens, who did work permanently from home, was a temporary agency worker, and Karl Doyle was a Senior Operations Director for Gratte Brothers Limited (which was a separate legal entity to the First Respondent) and lived and worked in the Republic of Ireland, from which he regularly visited and worked in the UK. The Tribunal was not satisfied that either comparator was an employee of the Company. By definition, the status of Peter Dibbens as a temporary agency worker was such that any arrangements in respect of homeworking were not permanent, whilst the status of Karl Doyle was that of a director of a different Company.

493. It followed that the Tribunal was not satisfied that the Claimant had proved facts from which the Tribunal could infer, in the absence of any other explanation, that the treatment about which the Claimant was complaining was at least in part the result of the Claimant's age. The Tribunal was not satisfied that the actual comparators cited were relevant or appropriate comparators. Their circumstances appeared to be materially different. Further or alternatively, the Tribunal was not satisfied that a hypothetical older employee would have been treated differently. There was no real evidence before the Tribunal to suggest that a hypothetical older employee would have been treated differently. The Claimant's case seemed to be based on comments made by Remi Suzan at the flexible working appeal meeting regarding the amount of the Claimant's working life which she still had ahead of her. The issue which was really being raised by Remi Suzan was that of the permanent nature of the change which the Claimant was asking the Company to make. The same consideration would have applied to many older employees. For example, an employee in his or her 40s would have over 20 years of working life potentially left. Moreover, it was not just the length of the period of time for which any permanent change might in place which had been considered by Remi Suzan, but the fact that the situation in relation to the business of the Company and the work being undertaken by any employee could change significantly over a period of only a couple of years, with this being a consideration which would also apply to older employees.

494. Further or alternatively, the Tribunal was satisfied that the business grounds being relied upon by the Company and the reasoning in support of those business grounds, as set out in both the decision letter of 14 March 2022 [193-195] and the appeal decision letter of 4 April 2022 [290-293] might just as easily have applied to an older comparator. In any event, those letters set out the position of the Company (and that of Remi Suzan) in relation to the flexible working request and appeal by way of explanation for the treatment of the Claimant in rejecting her flexible working request and rejecting her appeal and the Tribunal was satisfied that the Claimant's age formed no part of the reasoning for the decisions or treatment.

495. In so far as this complaint also seemed to be pursued as a complaint of direct age discrimination against the second and third respondent (see paragraph

15 and 15(d) of the Further Particulars [70-71], it was also dismissed on the basis of the conclusion set out above.

496. On the basis of these conclusions, it was not necessary to consider any possible defence of justification.

Direct age discrimination – detriments listed in List of Issues

497. As discussed above, the Claimant's pleaded case in respect of age discrimination, as set out in the Particulars of Claim and confirmed in the Further Particulars, was that remote / home working was refused because she was too young which involved treating her less favourably than Peter Dibbens and Karl Doyle who were permitted to work from home.

498. Despite this, numerous other alleged "*detriments*" have been added to the List of Issues which appeared in the Bundle [97]. In effect, this List of Issues seems to have become sidetracked with the effect that a lot of additional issues were added which did not arise from the Claimant's pleaded case.

499. It can be seen that the List of Issues identified the questions which the Tribunal would need to consider in respect of the alleged act or omission of refusing the Claimant's flexible working request because she was too young [96-97]. These questions are set out as paragraphs 1 and 3 to 8 under the heading in respect of direct age discrimination. Paragraph 8 poses the question [97] as to "*were those detriments?*". This can sometimes be in dispute in a direct discrimination case where it may be argued that the treatment which was supposedly less favourable did not actually amount to a detriment. Thus, in the List of Issues, the question being asked (or which should have been asked) was in respect of the pleaded act or omission which had been identified at paragraph 4, namely failing to approve a flexible working request because the Claimant was still too young. Instead, although the alleged detriment had already been identified, the List of Issues adds another question at paragraph 9 ("*What were those detriments?*") The Claimant appears then to have added seven further sub-paragraphs ((a) to (g)) listing various alleged detriments.

500. These alleged detriments, listed as (a) to (g), are matters which, at least to some extent, are complained about elsewhere as part of the Claimant's case, but as different complaints to that of age discrimination. At first blush it seemed a little opportunistic to be seeking to introduce further complaints of age discrimination through the List of Issues. The Case Management Order had limited the permission given to the Claimant to amend her Claim to that of amending her Claim so as to add complaints of constructive unfair dismissal and in respect of notice pay. However, it also seemed possible that the Claimant had interpreted the question as to detriments as being a question as to any detriment (in the sense of injury or loss) caused by the age discrimination. However, broadly speaking, the complaints are not complaints which had anything obvious to do with the Claimant's age. Some of the complaints are really issues as to remedy and / or causation, in that it is alleged that the Claimant was put under unnecessary stress and suffered injury to feelings. Ultimately, the Tribunal concluded that this part of the List of Issues was misconceived and / or was putting forward matters which did not amount to part of the Claimant's pleaded case in respect of age discrimination and / or in

respect of which, she did not have permission to amend her Claim by adding these as further complaints of age discrimination. Indeed, this point is rather emphasised by the fact that a significant number of the alleged detriments listed from (a) to (g) post-date the ET1 Form of Claim with the extent of the permission given in the Case Management Order to amend the Claim by adding subsequent complaints being limited to the subsequent complaints in respect of a constructive unfair dismissal and notice pay.

501. It might be argued that some of these matters were the subject of different complaints elsewhere in the Claim, so that introducing these matters as complaints of age discrimination simply involved relabelling complaints arising out of alleged facts which were already in issue. However, introducing the further component of any alleged treatment being on the grounds of age introduced another area of substantial enquiry and, ultimately, the Tribunal was not satisfied that these were complaints which were properly before the Tribunal (or even the subject of an application to place them before the Tribunal).

502. However, in the alternative, the Tribunal also considered whether these were complaints in respect of which it could or should conclude that the Claimant had been subjected to direct age discrimination and arrived at the decision that the matters complained of did not amount to age discrimination, for the reasons set out below. On the basis of these conclusions, it was similarly not necessary to consider any possible defence of justification. She

(a) "*The Claimant's appeal for flexible working dated 4th January 2022 was denied on 15th March 2022 and following appeal on 18th March 2022. This amounted to discrimination as the First and Third Respondents were choosing to treat the Claimant less favourably because she had raised a formal grievance complaint on the 1st March 2022*".

503. This complaint was subsequently identified as really being a complaint of victimisation and had also been included in the List of Issues as a complaint of victimisation [102]. Moreover, on the face of it, claiming that the reason for rejecting her flexible working request and appeal was that she had submitted a grievance sat uneasily with the Claimant's complaint that the rejection of her request and appeal was on the grounds of age.

504. The detrimental treatment being relied upon is that of having rejected the Claimant's flexible working request and appeal. This amounts to the same complaint as the one which the Tribunal has just considered in the foregoing paragraphs. Alternatively, if the detrimental treatment is the alleged act of victimisation, then the complaint would also fail on the basis that the Tribunal rejects the premise upon which the complaint is being made, namely that the rejection was an act of victimisation for having pursued a grievance. In so far as the complaint of direct age discrimination involved claiming that this alleged victimisation involved treating the Claimant less favourably than an older comparator, no actual comparator (in other words an order employee who had also submitted a grievance) had been identified, and the Tribunal was not satisfied that there was any basis or material which would have enabled it to have concluded that a hypothetical comparator would have been treated any differently. In any

event, the Tribunal was satisfied that the reason for the treatment of the Claimant was the reason set out in the flexible working decision letter and the flexible working appeal decision letter, and the reasoning of the Company, as expanded upon in those letters, for arriving at those decisions. In this basis, the complaint was also dismissed against the Second and / or Third respondents in so far as it was pursued against them.

(b) "*The First Respondents' decision to suspend the Claimant on full pay was an act of* (age) *discrimination*"

505. For the reasons previously discussed, the Tribunal was not satisfied that this was a complaint which was before the Tribunal. Clearly, the complaint is in relation to a decision which post-dated the ET1 Form of Claim in that the date of the Claimant suspension was 8 July 2022.

506. In any event, the Tribunal was not satisfied that there was any basis upon which it could conclude that the Claimant had been less favourably treated in this regard on the grounds of her age. There was no reason to suppose that an older employee in the same circumstances as the Claimant would have been treated any differently.

507. The Tribunal's findings of fact set out the circumstances and reasons for the Claimant's suspension and the Tribunal's conclusions in relation to that factual matrix have been set out in dealing with the Claimant's other complaints which arise from her suspension. It follows that the Tribunal is satisfied that the reason for the Claimant's suspension was that the breakdown in working relationships, in particular between the Claimant and her managers, gave rise to the concern that employment relationship between the Claimant and the Company might no longer be viable. This had nothing to do with the Claimant's age.

(c) "*The First Respondent's decision to carry out an investigation surrounding the employer/employee relationship was an act of* (age) *discrimination*"

508. This is effectively the same complaint as that dealt with at (b) above, save that the focus of the complaint is on the investigation which was instigated at the time of the Claimant's suspension. It follows that this complaint is also rejected for the same reasons as given at (b) above.

(d) "*The Claimant was not provided with a fair and/or an impartial investigation*"

509. Following on from the complaint immediately above about the investigation of the complaint into the employer / employee relationship and with this complaint referring to an investigation in the singular, this appeared to be a complaint about the subsequent conduct of the investigation which was instigated when the Claimant was suspended. On this basis, this would appear to be a very similar complaint to those dealt with at (b) and (c) above, save that the focus of the complaint is on the conduct of investigation. On this basis, it also follows that this complaint is also rejected for the same reasons as given at (b) and (c) above, but also on the basis that the Tribunal does not accept the premise involved in the complaint, namely that the investigation was unfair and / or not impartial. The outcome of the investigation did not uphold the concern that the working

relationship might have broken down irretrievably so that terminating the relationship might need to be considered. As such, the outcome reflected an open-minded and balanced approach to the investigation, particularly given that the outcome was open ended having regard to the recognition that further steps such as mediation could be considered. It follows that, by definition, the investigation was not fair and impartial.

510. In so far as, notwithstanding the use of the singular, the complaint might be interpreted as referring to the investigations (plural) which took place in 2022, the complaint lacks particularity in that the aspect of any investigation which was not fair or impartial is not identified, still less the basis for alleging that any such shortcoming amounted to treating the Claimant less favourably (than an appropriate comparator would have been treated) on the grounds of age. However, the Tribunal was not satisfied that there was any basis for concluding that any appropriate hypothetical comparator would have been treated any differently.

(e) "*The Claimant was put under unnecessary stress that ended up damaging her mental health*"

511. For the reasons previously discussed, the Tribunal was not satisfied that this was a complaint (as a complaint of age discrimination) which was before the Tribunal.

512. In any event, on the face of it, this complaint did not appear to be referring to treatment which amounted to discrimination on the grounds of age but appeared to be referring to the loss or injury which the Claimant saw as a detriment caused by her treatment by the Respondents, which would include the complaints involved in any alleged age discrimination. As such, this would really be a remedy issue, if it arose (which it does not, on the basis of our conclusions regarding the Claimant's complaints).

513. Taken at face value as a complaint of age discrimination, the complaint was based on the premise that the Claimant was put under unnecessary stress. Even if, for the sake of argument, the premise was accepted, it is a complaint for which no actual comparator is identified, and the Tribunal was not satisfied that there was any basis for concluding that a hypothetical older comparator, in the same circumstances as the Claimant, would have been treated any differently. Put another way, the Tribunal was not satisfied that age was a factor in any treatment of the Claimant which may have given rise to stress. Alternatively, the Tribunal accepted the explanation put forward by the Respondents to the effect that the reason for any treatment of the Claimant which may have given rise to stress was not that of her age.

(f) "*The Claimant suffered injury to feelings*"

514. This is effectively the same complaint as that dealt with at (e) above, save that the focus of the complaint is on any injury to feelings suffered by the Claimant rather than any unnecessary stress and / or damage to mental health. It follows that this complaint is also rejected on the basis of the same reasoning as given at (e) above, but with that reasoning applied to the complaint that the Claimant suffered injury to feelings.

(g) "*The Claimant was not allowed to communicate with any of her work colleagues for no valid reason*"

515. This complaint refers to the suspension letter. For the reasons previously discussed, the Tribunal was not satisfied that this was a complaint which was before the Tribunal. Clearly, the complaint is in relation to a letter to the Claimant on 8 July 2022, so post-dated the ET1 Form of Claim.

516. In any event, the Tribunal was not satisfied that there was any basis upon which it could conclude that the Claimant had been less favourably treated in this regard on the grounds of her age. There was no reason to suppose that an older employee in the same circumstances as the Claimant would have been treated any differently.

517. There is obviously a significant degree of overlap between this complaint and the complaint as to the suspension which has been dealt with at (b) above. The Tribunal relies upon its conclusions at (b) above as to the reasons for the suspension. This had nothing to do with the Claimant's age. The Tribunal was satisfied that the same was also the case with regard to the arrangements put in place for the Claimant suspension. These are standard arrangements which an HR adviser such as Angela Foster would have put in place in circumstances where an investigation was going to take place with the possibility of further action arising out of that investigation. The Company would not have wanted there to have been ongoing communication between the Claimant and other employees as well as other individuals connected with the Company given the possibility that this might compromise the investigation. A further factor was that the Company had taken the step of suspending the Claimant because of the concern that she would be due to return to workplace now that the grievance process had concluded. Given that a part of the perceived problem related to the Claimant's communications with other employees, such as her managers, it would not have been appropriate for there to be continued engagement between the Claimant and her managers whilst the investigation took place. In conclusion, the Tribunal was satisfied that the arrangements about which the Claimant complains, as put in place by the suspension letter, had nothing to do with her age, and everything to do with the reasons for suspending her. It follows that this complaint is also rejected for the same reasons as given at (b) above.

Harassment related to age

518. The List of Issues [99] identified that the Claimant was complaining of harassment related to age through "*comments made to the Claimant about her being "too young"*".

519. The Case Management Order made on 24 August 2022 had identified that the Claim included a complaint of harassment related to age [57]. The Claimant was ordered to give further particulars of the act or omission being claimed as unwanted treatment related to age [59]. The Further Particulars confirmed that the Claimant was complaining that the comments made to her about being "*too young*" amounted to "*unwanted treatment based on age*".

520. In making this complaint, the Claimant is referring to comments made by Remi Suzan in the flexible working appeal meeting on 30 March 2022. In addition to both the Company and the Claimant having produced a note of the meeting, the Claimant recorded the meeting and a transcript which is now available of that recording. The Tribunal has set out the actual comments made by Remi Suzan (as confirmed by the transcript of the recording of the meeting) in its findings of fact which also set out the relevant context to those comments.

521. The same alleged comments were also being relied upon by the Claimant in the complaints which she has raised under the statutory provisions in respect of flexible working and as part of her complaints of direct age discrimination. In dealing with those complaints, the Tribunal set out its conclusions as to the relevant factual matrix, and those conclusions are also relevant and relied upon in dealing with this complaint of harassment related to race.

522. In the first place, it should be noted that the Tribunal rejected the supposed factual basis for the complaint. In the Particulars of Claim the Claimant purported to quote directly the words used by Remi Suzan which the Claimant specifically stated were that "*you are still too young*" [23]. These words were not used by Remi Suzan as the Tribunal has already explained in dealing with the other complaints which arise out of his alleged comments. The actual words used were that "*you're a very young individual*" [266]. The context in which these words were used, as set out more fully elsewhere, was essentially that the Claimant was someone with a large part of her working life ahead of her.

523. In dealing with the Claimant's flexible working complaint, the Tribunal concluded that it was significant that, at the time, the Claimant clearly understood the context within which the comment was made. Although the Tribunal recognises, as pointed out in the Equality & Human Rights Commission Employment Statutory Code of Practice that not expressly objecting to any conduct in issue does not prevent it from being deemed to be unwanted, the Tribunal does think that it is significant that the Claimant did not seek, in the meeting, to challenge the comment as discriminatory or as amounting to harassment. This was because she understood that the context related to the duration of any flexible working arrangements as can be seen from the fact that she referenced Remi Suzan's comments in a discussion about possible alternative arrangements which raised the possibility of her application being agreed for four years rather than permanently [270]. It was also because she either understood, or it would have been clear to her if she given any thought to it, that these comments amounted to Remi Suzan seeking to assist the Claimant by being frank and forthright in setting out the possible counter-arguments against her request for permanent home working arrangements. Her immediate response was "(y)*eah, that's alright*" [266]. She then went on to put forward her position that the arrangements could be made permanent because they had worked since 2019, with this being a position with which Remi Suzan disagreed.

524. Considered in their correct context, the Tribunal was not satisfied that the words of Remi Suzan were related to age. His comments were about the permanent nature of the Claimant's flexible working request. Viewing the transcript of the discussion, in so far as the discussion involved two individuals expressing different opinions, the Tribunal was not satisfied that his comments were unwanted,

save to the extent that the Claimant had a different opinion, and any opinion to the contrary which Remi Suzan had potentially stood in the way of her request being granted. As such, the Tribunal was satisfied that any conduct did not have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant, Similarly, in the light of the Tribunal's comments regarding the circumstances in which the comments were made, their context, and the correct interpretation of the comments, the Tribunal was not satisfied that it was reasonable for any such conduct to be treated as having the effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant.

525. This complaint was also pursued against the Third Respondent, presumably on the basis that he was the source of the alleged comments, and against the Second Respondent, on the basis that he had failed to address the alleged behaviour (see paragraph 15(d) of the Further Particulars [71]) Both complaints also fail on the basis of the conclusion set out above to the effect that the alleged behaviour was not discriminatory.

Harassment related to sex (first list of complaints)

526. The Tribunal was not satisfied that any of these complaints of harassment related to sex were well-founded for the reasons set out below.

(a) "*The First Respondent's denial to permit the Claimant to leave a weekly team meeting in order to express milk as she was leaking milk. This amounts to sex related harassment*".

527. The complaint about failing to permit the Claimant to leave a meeting in March 2022 when she was uncomfortable as she was leaking milk was clearly earlier than March 2022 (the date given for this complaint appears in the list of complaints relied upon as giving rise to a constructive dismissal), as the Claimant complained about it in her grievance dated 1 March 2022 [189]. She stated that she had sought to leave the meeting and Paul Starkey had asked her to remain. There was no indication in the wording of the complaint that he was aware that she was leaking milk. She said that she had showed her wet clothes to a colleague who had said "*leave the meeting and sort yourself out*". In the grievance investigation meeting of 14 March 2022, the meeting was identified as having taken place approximately a month and a half previously [818] which would have dated it to the end of January 2022. Warren Mullem was identified as having told the Claimant that she should just go. From the interviews of Bhupinder Padda, Paul Starkey and Warren Mullem as to the incident, as part of the grievance investigation, it is clear that Paul Starkey was not aware of the reason the Claimant wished to leave the meeting, as was confirmed by Warren Mullem in answering a list of questions sent by the Claimant [892]. The Tribunal accepts that this was the position. At the grievance investigation meeting, the Claimant also suggested that she had asked Bhupinder Padda if she could go and if he could cover for her and he had said that she needed to stay [818]. However, he was clear when interviewed that he was not aware that the Claimant was leaking milk. The answers given by Warren Mullem in answering questions by the Claimant suggesting that Bhupinder

Padda was aware of the issue [892] were a little unclear, but did not establish that Bhupinder Padda was aware. Given that Bhupinder Padda made it clear when interviewed that Paul Starkey would have let the Claimant go if he was aware of the issue, it seems very unlikely to the Tribunal that Bhupinder Padda would have done otherwise, if he too had been aware of the position.

528. The Tribunal was satisfied that Paul Starkey would have got the impression that the Claimant believed that she was not needed for the remainder of the meeting and wanted to impress upon her that she should remain at the meeting, because it would be beneficial in terms of developing skill sets and because she had simply walked out of the previous meeting.

529. Ultimately, by reason of our conclusions set out above, the Tribunal was satisfied that any treatment of the Claimant on the part of Paul Starkey and / or Bhupinder Padda, was not related to the Claimant's sex. Moreover, their conduct did not have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant.

530. Did it have that effect? The Tribunal accepts that this was a situation which the Claimant found very embarrassing and, accordingly, about which she felt very aggrieved. However, properly analysed, her employer was entitled to want her to remain in the meeting, although, clearly, if she had a pressing personal reason for needing to leave, then it was open for her to do so. She had done so previously (although it was not clear that this was because of any pressing personal reason) and, ultimately, she did so on this occasion. As such, the Tribunal considers that there may well even have been an element of misunderstanding given that the words the Claimant says that she used ("*do you need anything else from me*" [817]) may have given the impression that she simply did not think that she was needed for the rest of the meeting (with which Paul Starkey clearly disagreed). In asking any question about leaving the meeting, and without it being clear (as the Tribunal has found) that Paul Starkey or Bhupinder Padda, were aware of her circumstances, the Claimant must have realised that the view might be taken that she needed to stay in the meeting. As such, taking into account the Claimant's perception, but also the other circumstances summarised above, and whether it is reasonable for the conduct to have that effect, the Tribunal was not satisfied that the effect of the conduct was such as to fall within this element of the applicable definition of harassment.

(b) "*The Respondents asked the Claimant to explain how does the woman's body work in relation to the breastfeeding. This amounts to sex related harassment*".

531. As explained below, the Tribunal considered that it was more likely than not that this was a complaint in relation to alleged comments which dated from more than three months before the Claimant notified ACAS of her prospective Claim, and so fell to be dismissed as out of time on the basis of the Tribunal's conclusions as to time limits.

532. In relation to this complaint, the Claimant referred the Tribunal to the transcript of her covert recording of the appraisal meeting which took place with Paul Starkey on 2 August 2021 and, in particular, the discussion which appears at

page 1068 in the Bundle. It was a discussion which Paul Starkey appeared later not to have remembered. The parts of the discussion which were most immediately relevant to this issue have been set out in the Tribunal's findings of fact. This was very much a discussion which was driven by the Claimant's insistence on wanting to discuss in the meeting the issues about which she was clearly aggrieved, and which she had been identified at section 9 of her amended appraisal form [705], in particular that the flexible working arrangements in place following her return from maternity leave involved her having to work between 8.30 am and 5.00 pm which she was saying made it difficult to breastfeed her child. This overlapped with the Claimant's sense of grievance regarding her perception that her availability during the working day was being excessively monitored through Skype. Following a meeting which had taken place on 26 June 2021 to discuss a request by the Claimant to introduce the arrangement in respect of core working hours which had applied following her return from her first period of maternity leave, the Claimant had been notified of the outcome declining this request on 30 July 2021, three days prior to the appraisal meeting [699]. Against this background, the Claimant was insistent on revisiting the issue of core hours, notwithstanding Paul Starkey making it clear that the position had been explained at the meeting which had recently taken place regarding the issue. The main point which the Claimant sought to pursue in relation to the issue was that she claimed that it was making breastfeeding her child really difficult. Given that Paul Starkey had made it clear that there was no problem with the Claimant breastfeeding her child during her working hours between 8.30 am and 5.00 pm, as had previously been made plain, the discussion inevitably developed in the direction of Paul Starkey seeking to understand the difficulty to which the Claimant was referring which included understanding the length of time for which she might need to be away from work in terms of the length of time needed to breastfeed a child.

533. This was very much an argument being driven by the Claimant as can be seen in particular from the exchanges at the top of page 1069 where Paul Starkey was insistent that no one was "*expecting you to carry on working while breastfeeding your child*". Despite the fact that the Claimant seemed to be intent on having an argument about the issue, it is notable that she did not suggest during the appraisal meeting that Paul Starkey asking her about breastfeeding had been objectionable.

534. It can be seen that the language used by the Claimant in making the complaint, which is to the effect that she was asked to "*explain how does the woman's body work*" is not the language used by Paul Starkey as recorded in the appraisal meeting.

535. In her Particulars of Claim [19], in the context of needing to express milk in the office, the Claimant also referred to comments by Paul Starkey asking her ''*how long are you going to take expressing your milk"* or ''*I don't know how does this work, explain it to me*''. This replicated comments referred to in the Claimant's grievance dated 1 March 2022 [187] and discussed during her grievance appeal meeting [403] in relation to which the Claimant described it as "*being asked to explain how a woman's body works"*. The grievance referred to being put in such "*situations*" (using the plural) by her "*bosses*", with Paul Starkey being specifically identified in the grievance appeal meeting. However, this was not a complaint

identified in her Further Particulars [62] although there was no separate list of complaints of harassment related to sex. Moreover, it was not a complaint dealt with in the Claimant's Statement of Evidence.

536. Any such complaint had been made in very general terms so that it was difficult to be clear about the details of any specific incidents, including the date of any alleged incident. In her submissions to the Tribunal, in relying upon the transcript of the appraisal meeting, the Claimant was effectively suggesting that this amounted to evidence in support on the basis that it showed that Paul Starkey had a propensity to make such comments or ask such questions. However, the Tribunal considered that the discussion around the issue of breastfeeding in the appraisal meeting was more consistent with the Company's case as set out in its Grounds of Resistance which accepted that Paul Starkey did ask the Claimant a number of questions regarding her expressing milk but this was "*to allow Mr Starkey to understand the Claimant's needs and provide her with an appropriate and comfortable environment*" [49]. Certainly, this was the context of any discussion as to breastfeeding in the appraisal meeting where the Claimant was suggesting that the situation was causing difficulties and any questions asked amounted to a genuine attempt to understand the Claimant's position and those difficulties. This is also consistent with the e-mail exchange from 5 January 2022 [753] which shows the Claimant's management being responsive to the issues raised by the Claimant regarding expressing milk as well as demonstrating a genuine desire to find a solution to those issues. Alternatively, the Tribunal was satisfied that, consistent with the findings of the grievance appeal investigation [356], that any discussion around breastfeeding and / or expressing milk had not involve questioning which could be described as intrusive but involved seeking to know how long the Claimant needed to be away from her desk in the office or home, which was not unreasonable.

537. Although the Claimant seemed to be referring to comments made on more than one occasion, given that the issues in respect of expressing milk had clearly been escalated by the Claimant's managers to HR before Christmas 2021, the Tribunal concluded that it was more likely than not that any alleged incidents had occurred more than three months before ACAS was notified of a prospective Claim.

538. Clearly, any discussion about the Claimant breastfeeding or expressing milk was related to sex. However, for the reasons set out above the Tribunal was satisfied that any such discussion did not have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. The Tribunal was satisfied that the Claimant's manager(s) would have been seeking to understand the situation both in terms of any issues which the Claimant had and in terms of any implications for her work which was being managed.

539. Did it have that effect, taking into account the Claimant's perception, but also the other circumstances summarised above, and whether it is reasonable for the conduct to have that effect? The Tribunal was not satisfied that the effect of any discussion or comments was such as to fall within this element of the applicable definition of harassment. In particular, the Tribunal was not satisfied that it was reasonable for any discussion or comments to have that effect. It is clear that, by at least July 2021, the Claimant was aggrieved about the situation

regarding breastfeeding during working hours and expressing milk in the office, as well as related issues, such as the extent of any monitoring of her work, and had developed a perception that her managers were seeking to harass her, but the reality was that her managers were simply seeking to manage her and deal with the various issues which she raised. Thus, when the Claimant raised the issue of breastfeeding or expressing milk, anything that was said or asked by her managers was resented and misinterpreted.

540. It also followed that, in so far as the complaint was also pursued against the additional Respondents, it fell to be dismissed in the light of the conclusions set out above. In any event, the complaint against the Second and Third Respondents seemed only to be pursued on the basis that they had failed to address the behaviour in issue (see paragraph (h) of the Further Particulars [71]). Any such complaint seemed to be based simply upon their senior positions as HR Director and Deputy Managing Director respectively. The Tribunal was not satisfied that this was a sufficient basis for either of the additional Respondents to become liable under the Equality Act 2010.

(c) "*The Claimant was told* (by Dean Robson) *during one meeting to go and do the coffee after she raised some concerns about a project*"

541. The Tribunal was satisfied that this was a complaint in relation to alleged comments which dated from more than three months before the Claimant notified ACAS of her prospective Claim and, thus, fell to be dismissed as out of time on the basis of the Tribunal's conclusions as to time limits. Further or alternatively, the Tribunal was not satisfied that the alleged incident amounted to harassment, for the reasons set out below.

542. Although the date of the alleged incident was given in the List of Issues as March 2020 [90], in evidence there was some uncertainty as to the date. It could not be pinned down more precisely than to the period between approximately September 2019 and March 2020. There was some inconsistency as to whether the comment was made in relation to getting the coffee (as above) [100] or getting the tea which is the version of the allegation which appears in the List of Issues as part of the alleged conduct relied upon as giving rise to a constructive dismissal [90]. Mr Husain made the point that, if the allegation was true, the Claimant would be able to remember. The alleged incident does not appear to have been contemporaneously documented. However, the alleged incident is described by a former employee, David Sanders, the former CAD department manager, who worked with the Claimant between September 2019 and March 2020. He described the incident in an undated text message [625] and in an e-mail dated 19 April 2022 [871] which was supposedly providing a reference. In the e-mail, he described one of the Claimant's colleagues as having quipped to the Claimant to "*go and make the tea*" when he had clearly lost a debate with her. He described the quip as being unprofessional. Although the Claimant referred to the communications from David Sanders at paragraph 79 of her Statement of Evidence, the Statement did not itself describe the alleged incident.

543. In conclusion, the Tribunal was not satisfied as to the precise detail of this incident, save that there was friction between the Claimant and Dean Robson which resulted in a comment made with neither the Claimant nor David Sanders at

the time considering that it warranted being taken any further. The Tribunal was not able to conclude, on the balance of probabilities, that any remark or comment made by Dean Robson was related to the Claimant's sex. Such a comment could be made to someone of either sex in a situation where there was friction or someone was not liked. Similarly, the Tribunal was unable to conclude on the balance of probabilities that any comment or remark made by Dean Robson had the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. Nor could the Tribunal be satisfied, on the balance of probabilities that it had such an effect. There was no real evidence before the Tribunal as to the effect of the comment save the opinion of David Sanders that the Claimant therewith situation with dignity and professionalism.

(d) "*The Second Respondent* (David Gratte) *stated "they should have made sure they could financially afford a baby before coming pregnant" referring to the Claimant and her husband, after she issued a flexible working request. This amounts to sex related harassment*".

544. The Tribunal was satisfied that this was a complaint in relation to an alleged comment from more than three months before the Claimant notified ACAS of her prospective Claim. Indeed, any alleged comment dated back to late 2018. As such, the complaint fell to be dismissed as out of time, on the basis of the Tribunal's conclusions at a time limits. Further or alternatively, the Tribunal was not satisfied that the alleged incident amounted to harassment, for the reasons set out below.

545. The alleged comment seems to have been relied upon by Michelle Bennett in support of complaints which she made following her resignation in about April 2019 which resulted in an independent investigation by an investigator (JT) from Croner Group Limited and in Employment Tribunal proceedings [1189] brought by Michelle Bennett in which the Claimant provided a Statement of Evidence confirming that her managers had been very supportive [1014].

546. In the grievance investigation undertaken by JT, David Gratte accepted that he made a comment that they "*should have made sure they could financially afford a baby before becoming pregnant*" (rather than the actual wording alleged by Michelle Bennett). In his written evidence to the Tribunal, David Gratte confirmed that he accepted having made this comment. The comment was made in a private HR meeting where the Company was reviewing its maternity policy in the context of the policy being challenged by the Claimant who was seeking contractual maternity pay. It was not a meeting at which the Claimant was present. He accepted that the comment was inappropriate. However, the outcome ultimately was that it was agreed that enhanced maternity pay should be paid by the Company with the Claimant being the first beneficiary of this new policy.

547. As stated, any comment was not made to the Claimant, and it would not have been expected that it would come to her attention, but for Michelle Bennett having raised it.

548. The Tribunal was satisfied that any comment was related to the Claimant's sex. However, given that the comment was not made to the Claimant, or intended to be reported to the Claimant, the Tribunal was not satisfied that any comment

was made with the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant, or that this was the effect of the comment viewed in isolation. Ultimately, the issue as to whether unwanted conduct is sufficiently serious to found a complaint of harassment is a question of fact and degree (see *Insitu Cleaning Company Limited v Heads [1995] IRLR 4, EAT*, and *General Municipal and Boilermakers Union v Henderson [[2015 IRLR 451, EAT*) and the Tribunal was not satisfied that this comment, although it was chauvinist and sexist, had reached the necessary degree of seriousness.

(e) "*The Claimant was told by the Second Respondent that she will not be able to take care of her children properly*".

549. This complaint was subsequently withdrawn. In any event, it was effectively an historic allegation, and outside the jurisdiction of the Tribunal on the basis of the Tribunal's conclusions as to time limits.

(f) "*The Second Respondent stated that "she should not have fallen pregnant"*".

550. This complaint was subsequently withdrawn. In any event, it was outside the jurisdiction of the Tribunal on the basis of the tribunal's conclusions as to time limits.

(g) "*The Third Respondent stated that "if you wouldn't have had children, you wouldn't have worked from home and nothing of this would have happened"*".

551. This complaint involves taking out of context comments made by Remi Suzan during the flexible working appeal. In fact, rather than taking the exact words as recorded in the transcript of the meeting as the basis for complaint, the Claimant seems to have reworded what was said so that it more closely aligns with the interpretation for which she was contending regarding what was said by Remi Suzan. The correct record of the words of Remi Suzan (according to the transcript) is that he posed the question to the Claimant namely "(y)*ou don't think that*" the "*arrangement has had any weight behind that*" (which was referring to the Claimant's "*relationship with … management being broken*") and "*that had you not had children and continued to come into the office, then you'd be in exactly the same position*" [273]. The Claimant seems to have interpreted this as Remi Suzan suggesting that she should not have had children. However, the point he was making was clear enough from the discussion in the transcript, namely that he believed that working from home for the best part of three years had had an impact on the Claimant's role in the business in that "*it hasn't been working well for three years because of how this is where we are now*" in that the Claimant's "*relationship with the department, the management, the company appears to have completely broken down*".

552. Considered in their correct context, and correctly quoted, the Tribunal was not satisfied that the words of Remi Suzan were related to sex. His comments were about the effect of her working from home. This assessment may have been unwelcome to the Claimant, particularly if she interpreted it as suggesting that she might have been better off not having had children, but this was certainly not what was said or meant. As such, the Tribunal was satisfied that any conduct did not

have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. Similarly, whilst taking account of the perception effectively put forward by the Claimant regarding the comment, in the light of the Tribunal's conclusions regarding the circumstances in which the comments were made, the context, and the correct interpretation of the comments, the Tribunal was not satisfied that it was reasonable for any such conduct to be treated as having the effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant.

Harassment related to sex (second list of complaints)

553. The Tribunal was not satisfied that any of these complaints of harassment related to sex were well-founded for the reasons set out below.

(a) "The First Respondent failed to provide an appropriate private space to express milk violating the Claimant's dignity".

554. The Claimant referred the Tribunal to the guidance from the Health & Safety Executive (to which she also referred Glenn Sheldrake in an e-mail in January 2022 [753-754]) recommending that it is good practice for employers to provide a private, healthy and safe environment for breastfeeding mothers to express and store milk (and also stating that toilets would not be a suitable place to express milk).

555. As far as arrangements for expressing milk were concerned, when the Claimant returned after her first period of maternity leave, the arrangements in place were that she could use a vacant office. This depended upon the person whose office it was not being around. Obviously, these arrangements were only needed on the one day a week when the Claimant attended the office, but it can be seen that it would not have been ideal given that the availability of an office might change from week to week. The Claimant states she was unhappy with these arrangements, but it is not clear that she suggested that there was anywhere more suitable for her to express milk. By definition, unless a workplace has a room which is not otherwise used, even a designated place to express milk may be in use for other purposes at some point in time. The issue becomes more one as to making sure that the place being used to express milk is completely private when it is needed for that purpose. The Tribunal was not referred to specific occasions when there was a problem with these arrangements. The same arrangements initially seem to have applied when the Claimant returned from her second period of maternity leave. However, on this occasion, she was more forceful in making clear her dissatisfaction with these arrangements. Thus, in the updated appraisal form for her appraisal on 2 August 2021, she raised the issue of wanting a designated area in the office to express milk and stated that it was embarrassing having to ask as to the availability of offices. She pointed out that most of the office doors had a glass window [705]. This resulted in Tom Delves identifying a solution, namely that the Claimant could use the HR meeting room when she attended the office on a Monday as it was highly unlikely that the room would be used that day [1081]. On the face of it, this appeared to be a workable solution. However, it did not work to the Claimant's satisfaction in that, in January 2022 she was e-mailing Glenn Sheldrake [753] stating that there had, after all, been occasions when the HR

meeting room had been required for a meeting. She also referred to a suggestion having been made that she could use the toilet instead. It is clear from Glenn Sheldrake's e-mail forwarding the Claimant's e-mail to David Gratte, Tom Delves and others, that identifying a solution to the issue was being taken seriously and a solution sought. The Tribunal accepted the evidence of Tom Delves that the concerns raised by the Claimant were addressed, in particular by covering up the window panel in the door and making sure that the room was booked out solely for the Claimant's use when she was attending the office [TD16]. In the grievance investigation interview it was confirmed that, as a result of the Claimant saying "*guys, please do something*", the HR meeting room was now "*knocked out for all on Mondays*" [817].

556. However, the main focus of the Claimant's dissatisfaction remained that she considered the HR meeting room to be insufficiently private. The extent to which the HR meeting room was sufficiently private with the subject of a protracted discussion during the grievance investigation meeting conducted by Angela Foster which was actually taking place in the HR meeting room so that the Claimant was able to point out respects in which she considered the room to be insufficiently private [816]. A similar discussion effectively took place during the Claimant's evidence to the Tribunal by reference to the photographs of the room which appeared in the Bundle [609-615, 626, 754]. The issue seems to have been that the room had both internal and external windows, but these were covered in blinds which, when shown in the closed position, as in the photographs, would appear to have been sufficiently effective. Paper coverings had also been fixed to the window in the door to the room. In the grievance investigation interview, much of the focus was on the Claimant's concerns as to the extent to which there were cracks or gaps in the blinds through which it might be possible to look into the room. Reading the transcript, it would seem clear that Angela Foster was not persuaded that this was a serious issue as she also reiterated in her Statement of Evidence [AF10]. The Tribunal accepted her evidence. The room was sufficiently private.

557. In conclusion, whilst the arrangements initially put in place for the Claimant to be able to express milk in the office may not have been entirely ideal, the Tribunal was satisfied that the Company did adopt an understanding and reasonable approach in seeking to improve those arrangements and addressed the Claimant's concerns. It was not as if a more suitable place than the HR meeting room was identified by the Claimant. It was adequate. When the Claimant raised issues which were not to her satisfaction, the Company sought to take steps to rectify those matters. The Tribunal was concerned that, by the time of the grievance meeting conducted by Angela Foster, the Claimant was being unduly critical of the arrangements and had adopted a mindset of finding something wrong with everything. Whilst it could be said that the conduct of the Company in putting in place the arrangements for the Claimant to have an appropriate private place to express milk were unwanted in the sense that such arrangements were not to the Claimant's satisfaction, and it could also be said that this related to the Claimant sex in that the arrangements were arrangements specific to her sex, the Tribunal was satisfied that any such conduct was not conduct which had the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. Whilst it may have been the Claimant's perception that any such conduct had such an effect, having regard to

the circumstances set out above, the Tribunal was not satisfied that it was reasonable for any such conduct to be treated as having the effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. Arrangements which were considered to be appropriate were put in place and were improved in response to issues raised by the Claimant. Even if there was scope to criticise any arrangements, this did not amount to harassment.

(b) "*The First Respondent constantly monitored the Claimant*"

558. This really relates to the process by which the Claimant was managed when she was working from home. The situation of being in an office and working face-to-face, which would have involved an employee being immediately available if something needed to be raised, was partially replicated through the home working arrangements put in place as a result of the pandemic which involved employees needing to be logged on to Skype for the purposes of communication [452]. The Skype system would then show their current status in terms of availability or activity and such like. Employees could then be contacted, as needed, through "*emails and messaging and phone calls*" [452]. However, Bhupinder Padda, who was responsible for a team of seven including the Claimant, made it plain that he simply did not have the time to be checking up on activity, so that any catching up with staff would have to take place when he was not otherwise engaged, such as in meetings. As such, the Tribunal considered that it was an exaggeration to be describing the monitoring as constant.

559. Nevertheless, it seems clear that there were occasions when the Claimant's Skype status caused her managers to become both suspicious and frustrated in that it appeared that the Claimant was not logging onto Skype which compromised the communication options [693]. When this was raised with her, the Claimant clearly became aggrieved with what she perceived to be the level of monitoring involved as indicated by her comments to this effect on the updated appraisal form [705]. This was one of the issues discussed in the appraisal, namely the Claimant feeling that she was being "*checked up on*" [1074]. The Tribunal noted that the stance been adopted by Paul Starkey was, on the face of it, reasonable, namely that he had no problem with someone being away from work. In other words, it was simply an issue of communication. The Tribunal considered that the Claimant's dissatisfaction as to the position stemmed, in part, from the fact that following her return to work from her first period of maternity leave, the core hours during which she was required to be available were relatively short, whereas now she was expected to be available during normal working hours from 8.30 am to 5.00 pm.

560. The Tribunal was also referred to e-mails sent by Bhupinder Padda chasing the Claimant for updates as to work [1090-1100] with the Claimant's responses being forwarded to Glenn Sheldrake [749-750] or Paul Starkey [773], sometimes being critical in doing so, including criticism as to not being able to contact the Claimant [776]. In the grievance appeal interview, Bhupinder Padda made it plain [451] that he was having to get updates as "*I have to report back to my directors and my managers, they will ask the same thing, how is your team doing?*" He made it plain that this was the same for all of the members of the team [452].

561. Another e-mail from 6 January 2022 from Glenn Sheldrake to Bhupinder Padda [1100] states that "*I thought we agreed you would call Marta at 4ish every day to run through her work*" but makes it clear that the "*same applies to all other the coordinators working for you*".

562. The Tribunal was also referred to a series of e-mails sent by Bhupinder Padda on 14 February 2022 regarding matters on which the Claimant was working which prompted the Claimant to send a sarcastic reply saying that it "*would be really helpful if you stop bombarding me with emails and let me do some work*" [368]. The Tribunal accepted the explanation provided by Bhupinder Padda during the grievance investigation and appeal, namely that he was sending the e-mails as he went through his own checklist following returning to work after an absence, and he was similarly seeking updates from other members of the team [230 and 452]. These were all legitimate e-mails about work which the Claimant was doing. In this context, the Claimant's sarcastic reply could be seen as unprofessional although the Tribunal appreciates that this occurred shortly before she was signed off work on 17 February 2022 with the reason given her stress at work.

563. In conclusion, the Tribunal did not accept that the Claimant was subjected to constant or excessive monitoring. Her managers were entitled to manage the Claimant, and this inevitably involved a degree of scrutiny which the Claimant found unwelcome. The home working arrangements in place effectively enabled employees to be managed through Skype. The effectiveness of this was diminished if employees were not logged on or could not be contacted. It is clear there were concerns on the part of those managing the Claimant that there were times when they expected her to be logged on and to be able to communicate with her but were unable to do so. Where this was followed up by the Claimant's managers, it clearly resulted in the Claimant becoming resentful as can be seen from the updated appraisal form where she complained that she was "*constantly asked where I am if I'm not on Skype all the time*" [705]. This resentment was clearly a factor in the working relationship between the Claimant and those managing her deteriorating. There was clearly also a degree of frustration on the part of the Claimant's managers who perceived that they were being thwarted in their attempts to manage the Claimant.

564. It follows that the premise on which this complaint of harassment is based, namely that there was constant monitoring (in the sense of being excessive) is misconceived. Whilst the degree of monitoring to which she was subject was clearly unwanted on the Claimant's part, it was legitimate monitoring arising out of the employment relationship and responsibility of the Claimant's managers to manage her work. Thus, the Tribunal was not satisfied that the monitoring came within the definition of harassment in terms of its purpose or effect being to violate the Claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant.

565. In any event, the Tribunal was not satisfied that this was conduct related to the Claimant's sex. In as far as employees were monitored through Skype, the monitoring arrangements applied to both male and female employees. Similarly, Bhupinder Padda was seeking to manage all the members of his team of seven in the same way. It was the Claimant, in the appraisal meeting of 2 August 2021, who had sought to turn the issue into one which related to her breastfeeding in that she

was suggesting that she was being chased by Paul Starkey or Glenn Sheldrake when she was not logged on Skype because she was breastfeeding [1068]. However, Paul Starkey made it clear that there was no issue with her breastfeeding during working hours. Indeed, he made it plain that if someone needed time away from work during the day, he did not have a problem with it; it was simply a question of communication, as it would be in the workplace [1074].

(c) "*At various times throughout the Claimant's employment, including during her first pregnancy and second pregnancy the Claimant had excessive workloads*".

566. There was no complaint about workloads in the appraisal form which the Claimant completed for her appraisal in 2018 [646]. In fact, the position was quite the reverse in that the Claimant referred to the fact that she was carrying two projects at the same time of finalising another one. She stated that "*I consider it to be something good, because it shows that I'm able to cope with a big and* (varied) *workload*" [647]. Her most important aim was "*to be given a bigger project where I can share my hard work again*" [648]. In completing the appraisal form, the Claimant showed that she was not shy in complaining about things that were not to her satisfaction so that she wanted "*the pay rise according to my role and the amount of work that I do*" [648] and complained about various other matters which were not to her satisfaction, or which should have happened and had not happened.

567. The Claimant states in her Statement of Evidence [C18] that, on 19 November 2018, she raised with Paul Starkey the issue of the long hours she was working while pregnant and that she was suffering from backache. From the contemporaneous documentation, it can be seen that the Claimant had raised the issue of suffering from a sore back and this resulted in Tom Delves arranging a maternity risk assessment on the same day. No issue as to workload was raised in the risk assessment. The overall risk was identified as being low. This is also consistent with the Claimant's Statement of Evidence dated 23 September 2020 which raises no issues as to work during this pregnancy. There is also no reference in the Statement of Evidence of Michelle Bennett to the Claimant having raised workload issues with her during this pregnancy. In the minutes of the meeting which took place with Tom Delves on 23 November 2018 [654-655] the Claimant refers to having raised various matters with her managers but does not refer to having raised the issue of workload.

568. In her evidence in support of her Claim, the Claimant did refer the Tribunal to a series of exchanges in December 2019 between Dean Robson and the Claimant [1200] where the Claimant refers to having sent an update at 00.24 am of the previous day and having finished working at 01.00 am. The context was that the Claimant was being asked by Dean Robson if she was getting someone else to pick up the points from his earlier e-mail and Dean Robson was suggesting that he could assist that person in doing so, but the Claimant then seems to have taken it upon herself to get it done. It is be noted that this was at a point in time when the Claimant had in place arrangements in respect of core hours so that it was open to her to do work in her own time if that suited her better rather than during working hours. The appraisal form which was completed for the Claimant's appraisal which was due in March 2020 did refer to the Claimant working "*extra hours when*

needed" but did not suggest that the workload was excessive and specifically referred to the support of her colleagues and bosses as a positive factor [661].

569. The Claimant had notified the Company of her second pregnancy on 3 August 2020. Her Statement of Evidence refers to having had to work long hours while heavily pregnant and that, after numerous complaints, she was told that the Company would pay her for the extra hours but that she would have to finish the work.

570. There was no reference to any issue in respect of workloads in the Claimant's Statement of Evidence dated 23 September 2020 which was suggesting that her managers were very supportive. However, heavily redacted payslips have been produced for October, November and December 2020 which seem to show the Claimant being paid for overtime amounting to 60.13 hours, 38.50 hours and 30.00 hours respectively. However, this would seem to show that, at least for nearly the last two years of the Claimant's employment, if there was any need to work extra hours. the Claimant could seek overtime in respect of having worked extra hours. Therefore, it is significant that the Tribunal was not referred to documentary evidence of other overtime payments having been made.

571. Whilst the Claimant says that she complained about working long hours, there is a lack of contemporaneous documentation in respect of such complaints. In the appraisal forms from 2018 and 2020 the Claimant had chosen to focus on her capacity to undertake all aspects of her work as a positive factor, as discussed above.

572. It is significant that the Claimant completed another appraisal form at the beginning of 2021, shortly after the period for which there is documented evidence of working overtime. There was no reference in this document to excessive workload [1035]. There was no reference to staff shortages caused by the pandemic. Indeed, the issue seemed to be more one of the available workload having been impacted by the pandemic.

573. Due to the delay in the appraisal taken place, the Claimant updated her comments on the appraisal form shortly before the appraisal meeting on 2 August 2021 [701]. The amended form now referred to feeling unsupported by her manager and contained nine paragraphs at section 9 regarding matters in respect of which she was clearly disaffected, but excess workload was not mentioned [705].

574. It is clear from the discussion which took place in the subsequent appraisal meeting on 2 August 2024, that the Claimant accepted that the issue of working excessive hours had not been brought to the attention of Paul Starkey and that the Claimant had been taking it upon herself to work additional hours. She sought to explain this by reference to her work ethic. Paul Starkey made it clear in that meeting that the Claimant should not be working more than 40 hours per week and that, if she felt that it was an issue, she should bring it to his attention and ask for more support, to which she replied "I certainly will from now on" [1075].

575. There is a lack of evidence as to excessive workloads being raised by the Claimant as an issue in the period after the appraisal. For example, in January

2022 she was raising the issue of her workload [162] but in relation to the type of work she was doing rather than the amount of work. This was also the main focus of her conversation with Glenn Sheldrake on 31 January 2022 [763]. However, shortly after this, the Claimant was signed off work for two weeks with stress at work. On her return she submitted a grievance which raised numerous issues, one of which was that of unrealistic workloads and being sent chasing e-mails by managers in relation to deadlines [189-190]. However, the only concrete evidence to which the Claimant referred was that of e-mails sent by Bhupinder Padda in February 2022 which were essentially seeking updates as to progress [1090-1100, 1106]. The specific occasion to which the Tribunal was referred, which involved Bhupinder Padda sending the Claimant several e-mails the short space of time on 14 February 2022 was clearly explained by Bhupinder Padda sending e-mails as he went through his own records having returned from an absence from work. He was not expecting the Claimant to deal with each and every e-mail straightaway. The Claimant's absence due to stress resulted in an occupational health referral being made with Tom Delves writing that the Claimant "*felt the demands of her workload were too much and that the Company was not supporting her*" [214-215]. The resultant occupational health report recorded that the Claimant "*reports excessive workload*" with the Claimant then making reference to receiving "*a barrage of e-mails*" [219] which would, again, seem to be referring to Bhupinder Padda having sent a series of e-mails in a short period of time. The report suggested assessing the Claimant's workload and reducing it if it was deemed excessive. Following his meeting with the Claimant to discuss the occupational health report, Tom Delves did speak to the Claimant's management and ascertained that it was not considered that the Claimant's workload was excessive, but rather that it was commensurate with other members of the team [TD9].

576. It follows that the Tribunal concluded that the premise on which this complaint of harassment is based, namely that there were excessive workloads, appears to be largely misconceived. Even in relation to the period when there was evidence of the Claimant working significant over time, she appeared to have done so of her own volition, and without bringing the situation to the attention of her managers. She explained in the appraisal meeting in August 2021that this was a product of her work ethic [1075]. In the appraisal meeting, Paul Starkey had made it clear there was no expectation upon her to be working anything other than normal working hours. The complaint of harassment presupposes that there was conduct on the part of her managers in giving her an excessive workload with the purpose or effect being to violate the Claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant, and the Tribunal simply was not satisfied that this was the case.

577. In any event, the Tribunal was not satisfied that this was conduct towards the Claimant which was related to her sex. The Claimant has sought to shoehorn this complaint into the framework of a complaint of harassment related to sex on the basis that the periods when she had an excessive workload included periods when she was pregnant. The Tribunal was not satisfied that the fact of an employee being pregnant was sufficient to cause the treatment of that employee to be related to their sex. Moreover, in relation to the period to which the Claimant was referring in the appraisal meeting, the situation was not restricted to the Claimant in that she told Paul Starkey that "*me, Clive, Helen, Peter, Mark Basker, we have all been*

working stupid amount of hours" [1074]. In so far as there was an issue, it was not an issue which was related to sex.

578. In any event, given that her second period of maternity leave commenced in January 2021, the Tribunal was satisfied that any complaint about a period when she was allegedly exposed to excessive workloads whilst pregnant was a complaint which dated from substantially more than three months before the Claimant notified ACAS of her prospective Claim and would fall to be dismissed as out of time on the basis of the Tribunal's conclusions as to time limits.

(d) "*The First Respondent's slander*(ing) *the Claimant with other employees*".

579. This complaint of harassment related to sex, as it appeared in the List of Issues, was not particularised in terms of identifying the statements or comments relied upon as amounting to slander. The Particulars of Claim did not specifically refer to any comments as amounting to slander. The Further Particulars provided by the Claimant did not provide further particularise any complaints of harassment related to sex. As such, the Tribunal was not satisfied that this was a pleaded complaint before the Tribunal. Alternatively, the Tribunal notes that the Further Particulars give examples of comments and statements being relied upon by the Claimant as amounting to slander at paragraph 13(m) [68] but this was not in the context of harassment related to sex but on the basis that the alleged comments or statements were being relied upon as conduct on the part of the employer which had given rise to a repudiatory breach of the contract of employment. In this context, it was not being alleged that the comments were related to sex. With the exception of the comment of Remi Suzan which was alleged to amount to slander, these alleged comments were not complained about in the Particulars of Claim. Indeed, the communication of the comments of Paul Starkey (see below) to the Claimant post-dated the Particulars of Claim since the record of the grievance appeal interview in which the comments were made was provided to the Claimant on 9 June 2022 [476]. The permission which the Claimant was subsequently given to amend her Claim did not extend to amending her Claim to add further complaints of harassment relating to sex.

580. Further or alternatively, in dealing with the complaint of constructive dismissal (see below), the Tribunal has set out detailed conclusions in relation to the alleged comments or statements relied upon by the Claimant as amounting to slander. That analysis of these alleged comments or statements is also relevant to the issue (notwithstanding the Tribunal's conclusions as to the scope of the Claimant's pleaded case) of whether any such conduct amounted to harassment related to sex. The Tribunal also considered the context of the alleged comments or statements by reference to the records of the interviews or meetings in which the comments or statements were made or alleged to have been made. In this regard, the context for the various alleged comments or statements can also be seen from the findings of fact set out by the Tribunal. In short, the Tribunal was not satisfied that there was any feature or features of the factual matrix identified by the Tribunal, which led to the conclusion that the conduct in question was related to the particular protected characteristic of sex. In any event, the Claimant's pleaded case could not be said to have identified the manner in which it was being alleged that any alleged comments or statements were related to sex.

581. The Claimant's closing submissions did not specifically address this issue beyond suggesting (in the context of constructive dismissal) that there had not been any problem with her relationship with Paul Starkey until the second pregnancy. Whilst the Tribunal has found that the deterioration in the Claimant's relationship with Paul Starkey can certainly be dated to her return from maternity leave in 2021 as evidenced by the amendments which she made to the appraisal form in July 2021, the Tribunal was not satisfied that the comments made by Paul Starkey in 2022 were anything other than an attempt, in good faith, to describe his perception of his relationship with the Claimant at that point in time, as it had become relevant to the investigation of the Claimant's grievance and appeal. The same applied to the comments made by Glenn Sheldrake in the course of his grievance investigation interview on 23 March 2022 with Angela Foster.

582. The comments of Remi Suzan (cited in the Particulars of Claim as "(y)*ou have never been asked to attend a site factory because you wouldn't know what you are looking at*" and "(y)*ou do not have the engineering knowledge*'', were comments which, considered in context, as set out in the findings of fact, the Tribunal was satisfied (as also explained above in dealing with these comments as part of the Claimant's flexible working complaint) amounted to Remi Suzan seeking to assist the Claimant by giving his frank opinion as to the limitations of her engineering experience by way of seeking to illustrate the potential consideration that there were possible benefits to the Claimant, in terms of developing her engineering experience, from attending the workplace as against working from home. The Tribunal was not satisfied that this amounted to slandering the Claimant. The Tribunal accepted the evidence of Remi Suzan as to the basis for his opinion and assessment the Claimant was lacking in engineering experience in this way.

583. The Claimant's Further Particulars (at paragraph 15(c) [71]) had also sought to bring a complaint against Remi Suzan on the basis that, during the flexible working appeal meeting, he had made "*offensive and ridicule comments towards the Claimant like "you wouldn't have a clue of what you are looking at"* (which) *shows the lack of impartiality and the intention of slander the Claimant*", although the type of discrimination being alleged was not clear from paragraph 15(c) itself. However, on the basis of the Tribunal's findings of fact and the Tribunal's conclusions as to the comments made by Remi Suzan during this meeting, and their correct context, the Tribunal was satisfied that any such comments did not amount to a discriminatory conduct on the part of Remi Suzan.

584. In conclusion, in relation to this complaint, the Tribunal concluded that, on our findings of fact as to the conduct in issue, we were not satisfied that there were any feature or features of the evidence or facts found to lead to the conclusion that the conduct was related to sex. In relation to the comments on the part of Glenn Sheldrake and Paul Starkey which were alleged to amount to slander, this conclusion is in the alternative to our conclusion that any complaint to the effect that those comments of Glenn Sheldrake and Paul Starkey amounted to harassment related to sex was not part of the pleaded case before the Tribunal.

(e) "*The First Respondent's vitriolic behaviour towards the Claimant*"

585. Again, this complaint of harassment related to sex, as it appears in the List of Issues, was not particularised in terms of identifying the alleged behaviour relied upon as being vitriolic. Similarly, the Particulars of Claim did not specifically refer to any behaviour as being vitriolic. As stated, the Further Particulars provided by the Claimant did not further particularise any complaints of harassment related to sex. As such, the Tribunal was not satisfied that this was a pleaded complaint or that it was a complaint to which the Respondents could sensibly respond. Neither the Particulars of Claim, nor the Further Particulars, nor the Claimant's closing submissions, specifically referred to any behaviour as vitriolic. Clearly, the List of Issues identifies a number of other complaints about the alleged behaviour of the Respondents, where the alleged behaviour in issue is specifically identified. Obviously, those complaints have been separately and individually dealt elsewhere in the course of our conclusions. In the circumstances, it did not seem to the Tribunal that this complaint in the List of Issues gave rise to any additional or further freestanding complaint beyond those which have, in any event, been addressed in the course of the conclusions of the Tribunal. In any event, having regard to the ordinary English meaning of the word vitriolic (the Oxford English dictionary entry for the meaning of the word is that "(e)*xtremely sharp, caustic, or scathing; bitterly ill-natured or malignant*" as a figurative adjective to describe language or persons) on the basis of the Tribunal's findings of fact, we were not satisfied that the behaviour of the Respondents could be called vitriolic.

(f) "*The First Respondent* (Tom Delves) *shared private and confidential information from the Claimant without her consent and knowledge*"

586. The Claimant's pleaded case in her Particulars of Claim referred to a meeting held on 22 April 2022 to discuss the occupational health report. She complains that, during that meeting, among other things, it was brought to the attention of Tom Delves that "*someone has also disclosed information about the Occupation*(al) Health Report to Remi Suzan and Oliver Dawson" [29] and that Tom Delves "*stated that he did had a phone conversation with Paul Starkey and Glenn Sheldrake (he could not recall the day) and that during that conversation he made them aware of the Occupational Health report, and that he thinks that probably they had told Remi Suzan*" [29].

587. There was nothing in this description of alleged events to indicate that the alleged treatment of the Claimant (through Remi Suzan allegedly being informed about the occupational health report) was related to the Claimant's sex. As such, the Tribunal was not satisfied that the Claimant's pleaded case contained a complaint of harassment related to sex in relation to this matter. Alternatively, the Tribunal was not in a position to conclude that the conduct in question was related to the particular characteristic in question, in the manner alleged by the Claim, when the Particulars of Claim did not allege the manner in which this was related to the Claimant's sex.

588. In any event, the report [217-219], which the Claimant had seen before it was disclosed to her employer, had made it plain that the purpose of the report was to give advice (as sought in the referral, which the Claimant is also referred to as having seen) to her employer and that, arising from that advice, "*management and/or HR*" would need to consider whether or not to implement the

recommendations of the report [219], one of which was that consideration be given to allowing the Claimant to work from home whilst the grievance process was concluded. Clearly, one of the main purposes of the meeting which then took place on 22 April 2022 was to discuss the extent to which any such recommendations might be implemented.

589. On the Tribunal's findings of fact, it is clear that, at the flexible working appeal, the Claimant and her companion at the meeting were inviting Oliver Dawson and Remi Suzan to consider the recommendations of the occupational health report [277]. They specifically referred Oliver Dawson and Remi Suzan to act on the recommendation in respect of working from home whilst the grievance issues were resolved and suggested that this should be taken into account. The only comment made by Remi Suzan was to the effect that the difference between the flexible working request and in the occupational health recommendation was that the timeframe for any home working as recommended by the occupational health report to be in place was not "*forever*". This distinction would have been apparent from the discussion regarding national health report that had taken place in the meeting, and which had been instigated by the Claimant. The thrust of the complaint now being made by the Claimant appeared to be inconsistent with the suggestion made at the time to the effect that the occupational health report should be taken into account.

590. The issue was then raised by the Claimant at a meeting with Tom Delves on 22 April 2022 [873] as set out in the Tribunal's findings of fact. It was the Claimant who suggested that Remi Suzan was aware of the content of the occupational health report from his comments in the flexible working appeal meeting. In fact, his comments could be made on the basis of the discussion which had taken place in the flexible working appeal. However, on this basis, she asked Tom Delves to explain how Remi Suzan was aware of the content of the occupational health report. The reply of Tom Delves effectively assumed that the Claimant's assertion was correct and assumed that Remi Suzan must have been made aware of the report by Paul Starkey and Glenn Sheldrake. However, he sought to stress that Paul Starkey and Glenn Sheldrake had only been made aware of the recommendations of the report.

591. Again, the Tribunal considered that the complaint now been made by the Claimant in relation to any possible disclosure of the content of the report to Remi Suzan was opportunistic in that it involved seizing on comments made by Tom Delves when the comments were, in themselves, speculative. In any event, at the earlier flexible working appeal meeting, she had been seeking to invite Remi Suzan to take the occupational health report into account. The Tribunal also considered that the distinction which Tom Delves sought to make between the content of the report and its recommendations was artificial in that the report was clearly written on the basis that the history being set out amounted to the relevant history which would clearly inform any consideration given to the recommendations in the report and the answers given in the report to the questions posed by the referral. The report was addressed to Tom Delves because he was the person that made the referral on the half of the employer. However, the language used in the referral was that of the first person plural [215] from which it is clear that the referral was being made on the behalf of the employer. Moreover, the introductory paragraph to the

report [217] made it clear that the report was being provided to the Claimant's employer. Further, any decision on the recommendations was clearly a matter on which HR could advise, but was ultimately a matter for management.

592. In conclusion, the Tribunal was not satisfied that the issue which the Claimant has now raised regarding the extent of any disclosure of the occupational health report involved treatment of the Claimant which related to sex or otherwise fell within the statutory definition of harassment.

(g) "*The First Respondent made a comment to the Claimant's husband (who is also an employee of the First Respondent) that "he gets the bonus twice"*"

593. This complaint relates to comments made by Paul Starkey, which do not appear to have been contemporaneously documented, in the course of a friendly conversation with the Claimant's husband, Paul Bowcock. The exact date of the conversation was unclear, although presumably capable of being established, given that it was a conversation about bonuses being awarded at the time of, or shortly after, a period when some employees had been away from work on furlough. In any event, it clearly pre-dated the appraisal meeting between the Claimant and Paul Starkey.

594. The Tribunal did not hear evidence from the Claimant's husband. Moreover, the Tribunal did not find the Claimant's evidence in relation to this issue to be reliable. In the course of the appraisal meeting, she had sought to give Paul Starkey the impression that she was aware of the comment made regarding receiving a bonus twice as a result of having overheard her husband's conversation with Paul Starkey [1077]. It seemed likely to the Tribunal that this became the Claimant's position as a result of Paul Starkey having become concerned, in the course of the discussion, that personal conversations that he had had with the Claimant's husband had been reported back to her. By contrast, in the grievance interview with Angela Foster, the Claimant specifically stated that the comments had not been made in front of her and that she had been told by her husband [822].

595. However, in addition to describing the conversation in the appraisal meeting, Paul Starkey also described the conversation in the grievance interview with Angela Foster and in the grievance appeal interview with Carl Tudor. The Tribunal concluded that the most accurate description of the conversation was probably that provided in the interview with Carl Tudor [448] where Paul Starkey accepted that, in the context of Paul Bowcock having queried employees who had been on furlough getting a bonus, Paul Starkey had replied "*tongue in cheek that maybe people on furlough may well be moaning that he had the bonus twice*" [448]. The Tribunal thinks that it is more likely than not that, of the inconsistent explanations given by the Claimant, the explanation given by the Claimant to Angela Foster was correct, namely that the Claimant's husband subsequently told her of this conversation. The Tribunal considered it was unlikely that the Claimant would have overheard the full detail of the conversation, but that this was an impression which she sought to give Paul Starkey in order to assuage Paul Starkey's obvious concerns about being undermined as result of private conversations being reported back to the Claimant by her husband.

596. Our conclusion in relation to the comment made by Paul Starkey is that it was a clumsy and inappropriate attempt at humour. It was made to the Claimant's husband and reported to the Claimant by her husband. The conduct in issue was unwanted in that she clearly considered the humour to be at her expense and to undermine her, as she made plain in the appraisal meeting, although the context at this point in time, when she raised it in the appraisal meeting, was that the Claimant had developed a wide-ranging sense of grievance regarding her treatment. In relation to whether the conduct was related to a relevant protected characteristic, the Tribunal considered whether the conduct was related to sex on the basis that it could be perceived as sexist in so far as it was suggesting that a wife's income was that of her husband. However, properly analysed, the comment did not relate to the Claimant sex, but related to her marital status. Although the Tribunal doubts the word "*household*" was specifically used, the point was effectively being made was that, where both the husband and wife in a married couple worked for the same employer, there would be two bonuses coming into that household. The comment could just as easily have been made to a female in the equivalent situation.

597. Ultimately, having regard to the guidance in *Richmond Pharmacology v Dhaliwal [2009] IRLR 336, EAT*, to the effect that dignity "*is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended*" and "*it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase*", the Tribunal was not satisfied that this was conduct within the statutory definition of harassment.

598. In any event, it appeared to the Tribunal that, notwithstanding a degree of uncertainty regarding the exact date of any such comments, the complaint had been made significantly outside the primary time limit. It was one of a number of historic complaints which had effectively been dredged up by the Claimant as ammunition to use against the Respondents when she decided to pursue a grievance and Employment Tribunal proceedings against the Respondents. On the basis of our conclusions in relation to the issue of time limits, we were not satisfied that it was just and equitable to extend time and we concluded that the complaint fell outside the jurisdiction of the employment.

(h) "*The Claimant was suspended from work without warning for no valid reason*"

599. From the telephone call made to the Claimant by Carl Tudor on 17 May 2022, it seems clear to the Tribunal that the Company had raised with its advisers its concern regarding whether the situation in the workplace had irretrievably broken down. From Carl Tudor's e-mail sent on 17 May 2022 [936], it seems likely to the Tribunal that the Company had been advised or was otherwise aware that one option which was open to it, where the employment relationship had irretrievably broken down, was to dismiss the employee (presumably as a dismissal falling within the scope of some other substantial reason for the purposes of ERA 1996 section 98). Another option was clearly to arrive at a settlement with the Claimant, and it is clear from the evidence put before the Tribunal by the parties that this was explored, but was not established to be a viable option, which appeared to have become clear by 8 July 2022. It also seemed likely to the Tribunal that the Company had been advised, or was aware, that if it was to consider

terminating the Claimant's employment on the grounds of irretrievable breakdown in the employment relationship, then it would need to follow some kind of process and it was clearly decided that this process should involve carrying out an investigation into the issues of concern which related to the possible breakdown in the employment relationship. The ostensible reason for suspending the Claimant, based on the evidence given to the Tribunal by Angela Foster, was that, in the absence of any other solution having been found, the Claimant could be due to be coming back to work into the workplace. However, the Tribunal was satisfied that this was only part of the reason. Whether the Claimant was working from home, or attending the workplace, a situation in which the Claimant was continuing to work, whether in the workplace or otherwise, was potentially untenable if the basis for that the investigation, namely that the employment relationship had broken down, was well-founded. The Tribunal was satisfied that the employment relationship between the Claimant and the Company was under significant strain, mainly because of the dysfunctional working relationship between the Claimant and Paul Starkey and Glenn Sheldrake. As such, in the circumstances, suspending the Claimant in the absence of any other clear way forward, whilst a notionally independent assessment of the situation was undertaken by way of an investigation by Croner, was a legitimate decision to make. The undertaking of such an investigation, if the issue had not been prejudged (and the Tribunal is satisfied that the outcome showed that the issue had not been prejudged), involved the possibility of more than one outcome. The fact that the conclusion of the investigation was to the effect that the employment relationship had not irretrievably broken down, and that mediation should be considered, does not cause the original reason for suspending the Claimant in order to undertake such an investigation to be invalid. Further alternatively, on the basis of our conclusions set out above, the Tribunal was satisfied that the suspension of the Claimant was not related to sex.

600. In any event, this complaint post-dated the ET1 Form of Claim and the Claimant did not have permission to add such a complaint of harassment by way of amendment. It follows that the Tribunal was not satisfied that this was a valid complaint before the Tribunal.

Direct sex discrimination.

601. The Tribunal was not satisfied that the complaints of direct sex determination, as identified in the List of Issues, were well-founded, for the reasons set out below.

(a) "*From the commencement of the Claimant's employment and continuing throughout during meetings as well as in emails the First and Second Respondents referred to the Claimant as "Gents"*".

602. This complaint was subsequently withdrawn. In any event, it was effectively an historic allegation, and outside the jurisdiction of the Tribunal on the basis of the Tribunal's conclusions as to time limits.

(b) "*The First Respondent's failure to announce the Claimant's promotion in April 2017; and failure to notify the Company's IT Department to update digital*

signatures" (The Claimant compared her treatment with that of actual male comparators namely Warren Mullem, Paul Starkey and Glenn Sheldrake).

603. The first part of this complaint relates to a circular or group e-mail not having been sent when the Claimant was promoted in April 2017 whereas the Tribunal was shown a number of examples of announcements of promotions or appointments being made by e-mail in relation to other employees. When interviewed about this issue as part of the grievance appeal investigation, Glenn Sheldrake was unable to provide much of an explanation other than saying that, if the issue had been raised at the time, he would have addressed it with HR [469]. However, in fairness to Glenn Sheldrake, he was being asked to explain something approximately five years later in relation to a matter which did not appear to have caused an issue at the time. In the event, the Tribunal was not satisfied that there was a relevant difference in treatment. It can be seen that the promotions of Paul Starkey and Warren Mullem in 2021 were announced at the same time as the promotions of female individuals, namely Tatiana Ceban and Natasha Baker [1211]. As such, the Tribunal was not satisfied that this complaint of discrimination was well-founded. In any event, it appeared to the Tribunal that this was an historic allegation arising out of the Claimant's promotion in 2017, and any complaint had been made substantially outside any primary time limit running from this date. On the basis of the Tribunal's conclusions in respect of the time issues, the Tribunal was not satisfied that there was any basis for time to run from any later date, or for time to be extended and so concluded that the complaint was outside the jurisdiction of the Tribunal.

604. There was a relative paucity of information or evidence regarding the further part of the complaint, which was the effect that no steps were taken to amend the Claimant's digital signature on her e-mails so that reference was made to her new job title. It can be seen that the Claimant herself e-mailed IT requesting that the footer to her e-mails be amended to reflect her new job title [326]. This was the sort of step which the Tribunal would expect an employee to be able to take themselves, either by amending the footer in so far as their individual e-mail settings allowed this, or by seeking IT assistance if this was not possible. If there was a serious issue in respect of this not having been done for the Claimant at the time, the Tribunal would have expected such an issue to have been raised at the time. The Tribunal was not referred to evidence showing the Claimant being treated differently in this regard. If there was differential treatment, the Tribunal was not satisfied that the Claimant had proved facts from which the Tribunal could infer, in the absence of any other explanation, that the treatment was at least in part the result of the Claimant's relevant protected characteristic. In any event, the same reasons as already given in relation to the first part of the complaint, the Tribunal was satisfied that this part of the complaint was out of time and outside the jurisdiction of the Tribunal.

605. The complaint regarding a group e-mail announcing the Claimant's promotion not being sent to everyone in the department in 2017 was also pursued against Remi Suzan (paragraph 15(a) of the Further Particulars [70]) with an equivalent complaint being pursued against David Gratte on the basis that it was alleged that he failed to send such an e-mail to the rest of the departments about the Claimant's promotion (paragraph 15(b) of the Further Particulars [70]). For the

same reasons as those set out above, the Tribunal was not satisfied that any complaint against the individual Respondents was well-founded.

(c) "*The First Respondent's constant monitoring of the Claimant whilst she was working from home*"

606. The Claimant also raised the same complaint as a complaint of harassment related to sex. The Tribunal has already set out its conclusions as to the relevant factual matrix in dealing with the complaint of harassment. Based on those conclusions, the Tribunal considered that it was an exaggeration to be describing the monitoring as constant. Further, the Tribunal concluded that, whilst there were concerns on the part of the Claimant's managers, the stance adopted by Paul Starkey, as explained in the appraisal meeting in August 2021, was essentially reasonable. One of the reasons for concerns having arisen, and one of the reasons for the Claimant having the perception that she was being unduly monitored, was that, with home working arrangements widespread as a result of the pandemic, the Claimant and her colleagues are effectively being managed whilst home working through Skype. However, these were arrangements which were in place for everybody. These arrangements potentially enabled the Claimant's managers to be aware when somebody was not working and this added to the Claimant's existing sense of grievance which derived from the fact that she did not have the same flexibility in terms of core hours as she had enjoyed under the home working arrangements in place following her first return from maternity leave. However, the Tribunal found persuasive the evidence given to the effect that the Claimant's managers had their own work to undertake, which potentially took them away from their computer screens, so it was not as if they were constantly checking the activity of employees on Skype. It was also clear from the evidence of Bhupinder Padda and from e-mail communications between Glenn Sheldrake and Bhupinder Padda [1100] that the arrangements being put in place to manage or scrutinise the Claimant's work were mirrored by equivalent management or scrutiny being applied to her colleagues. The Tribunal was satisfied that legitimate monitoring was in place arising out of the employment relationship and responsibility of the Claimant's managers to manage her work. In any event, the Tribunal was not satisfied that the Claimant was being treated differently on the grounds of her sex. In as far as employees were monitored through Skype, the monitoring arrangements applied to both male and female employees.

(d) "*At various times throughout the Claimant's employment, including during her first pregnancy and second pregnancy the Claimant had excessive workloads imposed by the First Respondent*" (The Claimant compared her treatment with that of an actual male comparator, with David Hines being specifically identified, on the basis that they were only required to deal with one project at a time, whereas at various times, including late 2018 and early 2019, the Claimant was expected to deal with more than one project at a time)

607. The complaint as it appears in the List of Issues effectively conflates two complaints. The first complaint was that, at various times during her employment, including during her first and second pregnancies, the Claimant had excessive workloads. This mirrors one of the Claimant's complaints of harassment related to sex. In dealing with this complaint of harassment, the Tribunal has already set out

the relevant factual matrix and its conclusions as to the issue of alleged excessive workloads. This complaint has become conflated with the complaint which appeared at paragraph 6(d) of the Claimant's Further Particulars which was that, "*at various times throughout the Claimant's employment, including during her first pregnancy towards the end of 2018 and the beginning of 2019 the Claimant was expected to deal with more than one project at a time, on occasions dealing with 3 projects at the same time*" in relation to which it was stated that the "*Claimant's senior male colleagues, including David Hines were only required to deal with one project at a time*" [63].

608. Of particular relevance to the complaint as one of less favourable treatment is that at the time of her appraisal in 2018 [646], the Claimant was not suggesting that dealing with more than one project at any one time involve detrimental treatment in that she referred to the fact that she was carrying two projects at the time of finalising another one on the basis that "*I consider it to be something good, because it shows that I'm able to cope with a big and* (varied) *workload*" [647].

609. In the context of less favourable treatment, it is also significant that, in raising the issue of working excessive hours in the appraisal meeting with Paul Starkey on 2 August 2021 [229], the Claimant specifically stated that "*me, Clive, Helen Peter, Mark Basker, we have all been working stupid amount of hours*" [1074], from which the Tribunal concluded that, if there had been periodic issues in respect of workload, it did not involve differential treatment of the Claimant on the grounds of sex, in that she was able to cite male and female colleagues who were in the same boat. Moreover, later on in the course of the same discussion, when Paul Starkey made it plain that the Claimant should not be taking on excessive work, the Claimant's explanation was "(t)*hat's not my work ethic*" [1075]. Paul Starkey made it clear in that meeting that the Claimant should not be working more than 40 hours per week and that, if she felt that it was an issue, she should bring it to his attention and ask for more support, to which she replied "*I certainly will from now on*" [1075]. As such, the Tribunal was not satisfied that any issue in respect of excessive workloads had been one of the Claimant being subjected to such treatment by her managers. When the issue was raised as part of the occupational health report in 2022, Tom Delves followed up the recommendation in terms of raising the issue with the Claimant's management and ascertained that it was not considered that the Claimant's workload was excessive, but rather that it was commensurate with other members of the team [TD9].

610. In so far as the complaint has effectively been reframed so that the Claimant is claiming a difference in treatment in terms of workload on the basis that, at various points in time, she was working on more than one project, whereas potential comparators were working on a single project, the Tribunal considered any such comparison to be flawed and any such complaint to be misconceived. The Claimant herself agreed in the appraisal meeting that projects could vary from a bigger project to a small project [1064] is also discussed by Paul Starkey in the grievance investigation interview [229].Comparison based on the number of projects on which the Claimant and a comparator might have been working at any given point in time was either meaningless, or a comparison which the Tribunal was not equipped to make in that it would have involved an analysis and assessment of the amount of work involved in each project (which would presume

the need to take account of other variables such as the length of time over which a project was taking place and the number of other individuals working on the project). The evidence simply was not before the Tribunal for the Tribunal to embark upon such an assessment. This was compounded by the fact that the complaint itself did not identify the senior colleagues being relied upon as potential comparators other than David Hines but the Claimant's Statement of Evidence made no reference to David Hines or his workload.

611. It follows that the Tribunal was not satisfied that there was any difference of treatment in terms of the Claimant's workloads being excessive compared to those of her colleagues. Further or alternatively, given the evidence put forward by the Claimant herself in the appraisal meeting regarding both male and female colleagues in the same position as her in terms of the excessive workloads, the Tribunal was not satisfied that it could be established that there was a difference in treatment on the grounds of sex.

(e) "*The Claimant was repeatedly asked to attend the office on a different day than the one stated on the contract with a short notice. Male colleagues that were regularly working from home did not have to attend the office at short notice on an alternative day*".

612. There was a degree of overlap between at the complaint at (f) immediately below so that the Tribunal considered the two complaints together as set out below.

(f) "*The First Respondent's repeated demands for the Claimant to attend the office on another day if there was some reason she was not going to attend on a Monday. For example, Bank Holiday*". (The Claimant compared her treatment with that of actual male comparators in that she stated that colleagues who were regularly attending the office were not asked the same, namely Matt Figgis, Neil Bakewell, Mark Basker, Paul Starkey and Glenn Sheldrake).

613. As stated, the Tribunal considered this complaint and that at (e) above together.

614. The home working arrangements in place following the Claimant's return from her first period of maternity leave specifically stated that she would work from home for four days per week, between Tuesday and Friday, and would attend the office on each Monday [657]. There is an absence of documentation to suggest that there was a significant issue regarding the Claimant needing to come in on a different day during the period that these flexible working arrangements were in place. Indeed, in the flexible working appeal meeting on 30 March 2022 the Claimant stressed that if "*I needed to come another day, I've always done it*" [266]. Any documented problems mostly relate to the period following the Claimant's return to work from her second period of maternity leave. It is to be noted that the wording of the flexible working arrangements put in place for this period were significantly different. They were confirmed by letter dated 13 November 2020 [138] which stated that "(y)*ou will attend the Regents Wharf office for 1 day per week*", with it then being stated that this "*has provisionally been arranged for Monday but may be subject to change*".

615. There were various occasions when the Claimant was unable to attend work on a Monday, or Monday was not a working day, when she was requested to attend work on a different day. An example was when the Claimant had a car accident on a Monday in May 2021 and was asked to attend on a Wednesday instead [1061]. There is also the example of a rota being sent out on 13 May 2021 making arrangements for each member of staff to attend the office on three out of the following five Wednesdays. This was as part of a plan to stress test the office, as part of return to work arrangements following the pandemic, by gradually increasing the number of members of staff in the office over five successive Wednesdays [PS9]. It cannot be said that these arrangements were made at short notice, and, in any event, the Claimant replied to the effect that she could not attend on these Wednesdays. On 20 August 2021 Paul Starkey had e-mailed the Claimant [1089-1090] asking "*would you be able to come into the office on any other day*" during the week of 30 August 2021 as it was a week in which the Monday fell on the bank holiday. On the face of it, this was a request rather than a requirement and involved more than ten days' notice. The e-mail prompted the Claimant to contact Tom Delves suggesting that this amounted to "*coercive control*" on the part of Paul Starkey. Tom Delves told the Claimant that she did not need to agree to attend the office on a different day purely by reason of the Monday being a bank holiday. The Claimant's Particulars of Claim also referred to having been "*asked*" to attend the office on a different day as a result of being on holiday on Monday 4 March 2022 [17] although this particular occasion was not referred to in the Claimant Statement of Evidence and the Tribunal was not referred to the documentation in relation to this. However, the Tribunal was referred to a later exchange of e-mails between the Claimant and Paul Starkey which arose out of the Claimant having leave booked on a Monday.

616. The Tribunal was satisfied that there were occasions when the Claimant was requested to attend work on a different day of the week if she was not attending work on a Monday. In her Further Particulars, the Claimant sought to compare her treatment with that of the five named colleagues identified above. However, the Tribunal was not satisfied that these were relevant comparators in terms of any comparison meeting the requirement by which the comparator must be in the same position in all material respects as the complainant save only that he, or she, is not a member of the protected class. From the rota for August and September 2021 [1087], they had working patterns which involved them attending the office three days per week. Thus, if they had to be on holiday on Thursdays, or one of those days was a bank holiday, then they would still potentially be in the position of attending the office one of the other two days in the week when they were scheduled to be in the office. Even if they were absent on all three days when they had been due to be in the office, their level of attendance in the office overall was such that there would potentially have been less of an issue about making good the day being missed. The Company's rota shows all of its employees regularly attending the office or other work sites each week [1087]. In relation to Mark Basker, communications between Paul Starkey and Neil Brading, who was responsible for updating the rota, show Neil Brading being instructed that Mark Basker needed to do a minimum of at least two days in the office in the week of 23 August 2022 [1086].

617. In any event, the Tribunal was not satisfied that the reason for asking the Claimant to attend the office on a different day was because of her sex. It was apparent from the Home Working Policy of the Company, and from the flexible working arrangements which had been put in place for the Claimant, that the Company considered that there was a business need, in the sense of it being desirable from a business perspective, for the Claimant to attend the office one day per week. In seeking to manage the department, Paul Starkey and Glenn Sheldrake sought to make arrangements for the Claimant to be in the office at least one day a week because they shared this perspective. It was not because of the Claimant's gender. The Tribunal was satisfied that the same request would have been made of a hypothetical male comparator in the same position as the Claimant. The same conclusions also applied to any issue in respect of the extent of any notice given. From the evidence before the Tribunal, it is clear that, on a number of the occasions in issue, a reasonable amount of notice was given to the Claimant when making such requests, which would reflect the fact that it had been possible to anticipate the situation of the Claimant not being in work on a Monday. However, this was clearly dependent on the circumstances giving rise to such a situation been capable of being anticipated rather than arising through an unexpected event such as a car accident.

(g) "*The First Respondent's denial to permit the Claimant to undergo her appraisal remotely via video conference, rather than face to face. Some male colleagues were allowed to do so*". (The Claimant compared her treatment with that of actual male comparators, namely Aaron Burton and Warren Mullem).

618. The circumstances which resulted in the Claimant's appraisal being arranged to take place in the office on Monday 2 August 2021 are set out in the Tribunal's findings of fact. The appraisal had originally been delayed because of the pandemic. The point in time when Paul Starkey was seeking to go through the outstanding appraisals coincided with the point in time when the Claimant's managers were seeking to get employees back into the office. On 10 June 2021 Paul Starkey replied to an e-mail from the Claimant regarding her outstanding appraisal by indicating that he was hoping to do any outstanding appraisals face-to-face and was currently working through them but "*they are obviously affected by current office attendances which should be resolved when the adopt the Home Working Policy and return to office three days a week*" [1052]. He wrote that he assumed that, at this point, the Claimant would be attending the office regularly on a Monday. Notwithstanding this, he specifically stated that he was happy to do the appraisal by way of a Skype meeting but did state that if "*you want to do this via a Skype meeting instead I'm happy to do that personally I feel that face-to-face meetings are usually more productive*". On 22 June 2021, the Claimant made it clear to Paul Starkey, on the telephone, that she would want to do the appraisal by Skype because of her personal circumstances as someone with asthma who had only been vaccinated once. About five weeks later, on 26 July 2021, Paul Starkey e-mailed the Claimant regarding the Claimant not having got back to him regarding his earlier e-mail as to whether her preference was for the appraisal to be conducted by Skype or face-to-face [PS13]. The e-mail added that as "*the office is open again are you available to have your appraisal on Monday 2nd August*". It seemed to the Tribunal to be likely that Paul Starkey must have forgotten any telephone conversation on 22 June 2021. The Claimant replied to this e-mail

stating that "*I did get back to you over the phone and told you I prefer to do it on Skype, but of course I'm available at 10 am on 2nd of August to do it in person*". In the circumstances, the Tribunal was satisfied that the situation was simply one of an unfortunate mix up over the communications between the Claimant and Paul Starkey, partly caused by there being a significant gap between some of the key communications involved in setting out the arrangements for the appraisal. It is unfortunate that the passage of time clearly resulted in Paul Starkey forgetting the telephone call. This can be seen from his email to Tom Delves on 2 August 2021 [1082] in which he states that he had received no response to his e-mail in June regarding arranging the appraisal Had the Claimant replied by e-mail rather than telephone, looking back through his e-mails would have served to remind him of the position. However, the second point is that, in the circumstances, he put in place provisional arrangements for the appraisal to take place on a day when both of them were in the office, which was consistent with his preference for such a meeting to be conducted face-to-face, and the Claimant agreed to these arrangements. Thus, the appraisal went ahead as a face-to-face meeting on 2 August 2021.

619. In relation to the cited comparators, the Claimant's grievance appeal pointed out that the appraisal of Aaron Burton took place by Skype on 14 June 2021 although he had been in attendance in the office on 9 June 2021, and the appraisal of Warren Mullem took place by Skype on 15 June 2021, although he also attended the office on 16 June 2021. However, it is to be noted that this was more than six weeks before the Claimant's appraisal eventually taking place at the beginning of August 2021. In June 2021, the Company's arrangements for returning to office-based working were still in their infancy with this being the period over which the Company was stress testing the building [PS9]. At the same time as these appraisals actually took place, Paul Starkey had e-mailed the Claimant stating that he was "*happy*" to do her appraisal by Skype [1052]. She agreed when replying to Paul Starkey's e-mail of 26 July 2021. The Tribunal considers that it was open to the Claimant to ask for the appraisal to take place on a different date when she was working from home, so that it could have taken place by Skype. Paul Starkey had made provisional arrangements, contingent upon the Claimant's availability, and in the light of the Claimant confirming her availability, it was hardly surprising that the appraisal went ahead on 2 August 2021. The Tribunal was not satisfied that the simple fact of some other male employees having had appraisals by way of Skype established that their circumstances, for the purposes of comparison, were the same as the Claimant's. In any event, the Tribunal was not satisfied that the Claimant had proved facts from which the Tribunal could infer that the treatment complained about was at least in part the result of the Claimant's relevant protected characteristic. Ultimately, the Tribunal was satisfied that the appraisal took place face-to-face because Paul Starkey had forgotten the earlier telephone conversation when he made the provisional arrangements for the appraisal to take place, and the Claimant subsequently confirmed her availability. Thus, the Tribunal was satisfied that the reason for the treatment of the Claimant was not that of her sex.

(h) "*From the Claimant's return from maternity leave she was asked to undertake work beneath her grade and responsibility*" (The Claimant compared her treatment with that of an actual male comparator, namely Warren Mullem)

620. The Claimant had returned from her first period of maternity leave on or about 10 July 2019. A second period of maternity leave seems to have commenced on or about 11 January 2021 and lasted until her return to work on or about 22 April 2021. Before she went on this second period of maternity leave, it was clear the work which she was doing had been impacted by the pandemic. The appraisal form for 2021 which had originally been completed in about January 2021 [1035-1041] must have reflected the position prior to the Claimant going on maternity leave. At section 4 of the form [1037] the Claimant had stated that it had been a "*challenging year for everyone*" and that everyone "*is aware that working as a CAD resources not ideal for me, but I feel that we all needed to contribute to do as much as we could to help the business keep going during this difficult times and hence I've done it happily and do my best as usual*". The comments added by Paul Starkey were that the current workload had been affected by the pandemic but it was hoped "*that in the future you will be able to resume more of a Coordinating Engineer role rather than CAD resource*". However, this was subject to the "*type of workload available"* and the "type of project dictates the level of involvement required".

621. The Claimant raised the issue of only doing "*coordination*" and asked as to when she next get "*another job as a coordinator engineer*" in her e-mail to Paul Starkey on 21 January 2022 [162]. Paul Starkey discussed the e-mail in an e-mail with Glenn Sheldrake [161] which made a number of points, namely that (1) the job that the Claimant was doing was that of a Coordinating Engineer in that the work that she was doing was within the job description of a Coordinating Engineer (2) the Claimant was incorrect if she thought that Coordinating Engineers did not do coordination drawings and just did management, (2) leading a project was "*down to what workload we have available and how it is best resourced*". His reply to the Claimant [759] made it clear Claimant was "*employed as a Coordinating Engineer whose main role is to produce coordinated drawings*" [759]. This resulted in an exchange of e-mails between Paul Starkey, Glenn Sheldrake and the Claimant with the Claimant asking to be shown where it said this in her job description, and Glenn Sheldrake replying that the department was a coordinating department producing coordinated drawings as was clear from the job description, to which the Claimant replied that "*I agree that it is in my job description*" [757] but sought to assert that it was not her main role. This resulted in the Claimant's discussion with Glenn Sheldrake on 31 January 2022 which was recorded [763] in which Glenn Sheldrake reiterated that the position was that the Claimant was a "*coordinator engineer, it is in your job role, what you do, you are a coordinator with engineer experience to put in to your coordinating skills*" [763]". Similarly, Glenn Sheldrake made it clear that this was what "*we do as a department*" to which the Claimant replied that "*I don't know what everyone else does*" [764].

622. This then an issue raised by the Claimant in her grievance [185] albeit, her complaint was phrased in terms of having been "*demoted*" since her return from maternity leave, although it had been made clear to her that her position was still that of a Coordinating Engineer.

623. The Claimant also raised the issue during her flexible working appeal meeting with Remi Suzan. He suggested that the Claimant needed to be getting (engineering) experience on site, which she could not get working remotely at

home, and that this had been a factor in her having "*been given easier work… because that is the easiest solution to keep you busy*" [268]. He further made it clear that the role to which he referred to the Claimant as having previously done on the Moorfields and Wimbledon projects "*is not there at the moment*". He was blunt in suggesting that, had the Claimant not been given the work that she had been given, it would have been necessary to furlough to her.

624. Remi Suzan also suggested in this meeting that a further factor in the work which the Claimant had been getting was that, in his opinion, the Claimant was lacking experience in the engineering side of the role [262]. He specifically contrasted the position of the Claimant with that of Warren Mullem who was "*exceptional with the engineering side of it"* although he recognised that, conversely, Warren Mullem was not as good on the production and management side [262]. When he suggested that he understood the Claimant to be suggesting in her appeal letter that she wanted to be treated like Warren Mullem, the Claimant categorically denied that this was the case [267], which seems to be at odds with her case now to the effect that she should have been treated in the same way as Warren Mullem.

625. In the resultant flexible working appeal decision, it was suggested that the Claimant had not been undertaking the full (engineering) remit of her role because she required "*development and mentorship within the engineering element of your role*" [290].

626. In the course of his oral evidence, which the Tribunal accepted, Remi Suzan confirmed and further explained the analysis which had been discussed and set out in the flexible working appeal meeting and resultant decision regarding the work that the Claimant was doing, as set out above, and in the Tribunal's findings of fact. Broadly speaking, this was the same analysis as that provided by Tom Delves and Glenn Sheldrake in the course of the grievance appeal investigation.

627. In the Tribunal's findings of fact, the Tribunal has confirmed that it was clear to the Tribunal that the Claimant had found herself, at least at times, working as a "*CAD resource*" so that the work that she was doing was work which would have been within the scope of her previous role as a CAD Coordinator. However, the Tribunal concluded that this reflected the work which the Company had available which had been impacted by the pandemic. Moreover, there was a significant overlap between the role of a CAD Coordinator and that of a Coordinating Engineer as was clear from the analysis, which the Tribunal accepted, which had been undertaken by the Croner consultant as part of the grievance appeal investigation [363-364]. The Tribunal also accepted the analysis of Glenn Sheldrake, given during the grievance appeal investigation [469] to the effect that a Coordinating Engineer carries out coordination so that references to utilising CAD resources covered the work of the CAD department which included the whole team from CAD Coordinators to a Senior Coordinating Engineer.

628. The Tribunal further accepted the analysis of Remi Suzan given in the flexible working appeal on 30 March 2022 that it had continued to be the position that the jobs which the Company had restricted the work which could be given to the Claimant having regard to the Claimant's knowledge and experience regarding the engineering side of her role, when contrasted with that of colleagues, with Mark

Basker being a specific example which was discussed during the course of the meeting [267].

629. The specific comparator identified for the purposes of this complaint of direct sex discrimination was Warren Mullem. In this regard, the Tribunal was not satisfied that Warren Mullem was an appropriate comparator. In the flexible working appeal meeting, in terms of comparing the Claimant's skillset with that of Warren Mullem, Remi Suzan outlined the significantly greater level of engineering knowledge and experience which Warren Mullem had. In any event, in the first place, it is to be noted that he had been promoted to the position of Senior Electrical Coordinating Engineer in July 2021 [1211] so that he was, after that date, by definition, more senior than the Claimant, so that it would be expected that he would be undertaking a higher level of work. On the face of it, any complaint regarding being treated less favourably than Warren Mullem only potentially applied to the period prior to July 2021, in which case, any such complaint was a complaint which was significantly out of time when viewed in terms of the primary time limit of three months. For the reasons already given in dealing with the issues in respect of time limits, the Tribunal was not satisfied that any alleged act of discrimination involved in being treated less favourably than Warren Mullem in these respects should be treated as running from any later date, or that it was just and equitable to extend time.

630. Whilst the Particulars of Claim do raise a complaint in relation to the promotion of Warren Mullem, it is to be noted that the Case Management Order had specifically directed the Claimant to confirm and set out, by way of Further Particulars, the actual complaints of direct sex discrimination being brought, and the complaints subsequently listed in the Further Particulars [64] do not include a complaint regarding the promotion of Warren Mullem but rather focus on the Claimant having been required to undertake work beneath her grade and responsibility, which is clearly a different complaint. In any event, for the same reasons as those given in the previous paragraph, the Tribunal was satisfied that any complaint regarding the promotion of Warren Mullem would fall to be dismissed as out of time and outside the jurisdiction of the Employment Tribunal.

631. However, it should be noted that at paragraph 15(e) of the Further Particulars [71], in setting out complaints against the individual Respondents, the Claimant complains about comments made by Remi Suzan during the flexible working appeal meeting regarding the Claimant's lack of engineering skills in which Remi Suzan had also made comments to the effect that Warren Mullem was "*exceptional with the engineering side of it*", but conversely was not as good on the production and the management side of it. The Claimant points out that Warren Mullen, nevertheless, secured promotion to the position of Senior Coordinating engineer, whereas it was said that the Claimant would need at least 10 years' experience to get promotion. This would actually seem to involve conflating comments made by Remi Suzan regarding the Claimant's lack of engineering experience with comments made by Paul Starkey in the grievance investigation interview [228] where he stated that the Claimant "*doesn't have that experience*" and to "*become Senior Engineer she would need to be in a role for around 10 years*". These comments were clarified by Paul Starkey in the course of the grievance investigation appeal interview where he made it clear that the issue was

not as to the length of time needed for the Claimant to get promotion but as to needing the necessary skill set for these purposes. He made it clear that the Claimant did not, at this stage, have the skillset to be a senior engineer anyway [439].

632. The Tribunal accepted the evidence of Remi Suzan and Paul Starkey as set out above. Remi Suzan made it clear that the work "*going through the business* (involved) *engineering driven production within the drawings, and the management of the design and the production of the drawings, not just production of the physical drawings themselves*" so that "*it's more difficult to use you remotely… when you don't have the skill set to do that*" [263-264] and made it clear that the Claimant was not in a position to be assigned to certain larger projects. By contrast, Warren Mullem had the skill set for that sort of work. When put on the spot in the course of the flexible working appeal meeting, the Claimant seemed to accept that she could not really seek to compare her position with Warren Mullem . Their skill sets were significantly different. That difference was the reason for the difference in treatment. As such, the Tribunal did not accept the basis for the Claimant's complaint (against Remi Suzan) that promoting Warren Mullen in July 2021 involved treating her less favourably on the grounds of sex. In any event, as stated, the Tribunal concluded that any such complaint was out of time and so outside the jurisdiction of the Tribunal.

633. In relation to the complaints of having been treated less favourably than Warren Mullem in relation to work allocation, the Tribunal has already noted that the Claimant was adamant, in the flexible working appeal meeting, that she was not seeking to compare her work with that of Warren Mullem. Clearly, this was a realistic concession in the light of his more senior role. In terms of the position prior to July 2021, in both the original and the updated appraisal form, the Claimant accepted that the reason for the level of work which she was being allocated was that of the impact which the pandemic had had on the work streams of the Company. In conclusion, the Tribunal was not satisfied that the Claimant had proved facts from which the Tribunal could infer, in the absence of any other explanation, that the treatment was at least in part the result of the Claimant's relevant protected characteristic. Further or alternatively, the Tribunal accepted the reasons put forward by the Respondents, as documented at the time, for example in the appraisal, grievance and flexible working processes, by way of explanation for the work which the Claimant had been doing. As such, the Tribunal was satisfied that the Claimant's sex was not the reason for her treatment in these respects.

(i) "*At various times throughout the Claimant's employment she was denied the right to carry over more than 5 days annual leave at the end of the calendar year. Therefore, the Claimant lost annual leave entitlement. However, male colleagues were*". (The Claimant compared her treatment with that of an actual male comparator, namely Aaron Burton).

634. Although this was a complaint made in the Particulars of Claim, and listed in the Further Particulars, the Respondents further and amended Grounds of Resistance made the understandable point that this complaint was largely particularised in that the occasions when the Claimant had requested or been denied the opportunity to carry over annual leave were not identified. The issue

was not dealt with in the Claimant's Statement of Evidence. In cross examination Claimant did seek to suggest to Paul Starkey that there had been an occasion when she had not been allowed to carry over eight days of annual leave and contrasted her treatment with that of Aaron Burton. This would presumably have been at the point in time when the separate arrangements which had been put in place as a result of the pandemic applied, but Paul Starkey could not remember this, and the Claimant accepted that it was not documented. Ultimately, the Tribunal concluded that there was an absence of evidence from which it could arrive at any conclusions in relation to this alleged difference in treatment.

635. The Respondents did refer Tribunal's correspondence [967-971] from the end of 2021 which showed that the Claimant had been able to carry over five days of unused annual leave from 2020 to 2021 and was then able to carry over 2.5 days of unused annual leave from 2021 to 2022. As such, the premise of her complaint, namely that she had been denied the right to carry over annual leave "*throughout*" her employment appeared to be incorrect.

636. As stated, the Tribunal was not specifically directed to evidence in respect of the position regarding any annual leave in 2019 or earlier. If there was such an issue, then any complaint to the effect that it amounted to discrimination would potentially be out of time. Moreover, this also potentially applied to any complaints regarding being treated less favourably than Aaron Burton regarding carrying over annual leave in that the rota for 30 August 2021 shows that Aaron Burton had left the Company on 17 September 2021 [1087] more than three months before ACAS was notified of the prospective Claim. Moreover, given the leaving date of Aaron Burton, if there was any issue regarding Aaron Burton being treated more favourably than the Claimant regarding carrying over annual leave, it must have been in relation to annual leave for 2020 or earlier. For the reasons given in dealing with the issues in respect of time limits, the Tribunal was not satisfied that any alleged act of discrimination involved in being treated less favourably than Aaron Burton in these respects should be treated as running from any later date, or that it was just and equitable to extend time.

637. In any event, the Tribunal was not satisfied that the Claimant had proved facts from which the Tribunal could infer, in the absence of any other explanation, that the treatment was at least in part the result of the Claimant's sex.

(j) "*The Claimant was told by the Third Respondent that having had children and working from home had damaged her relationship with the First Respondent*".

638. This complaint relates to comments recorded as being made by Remi Suzan in the transcript from the flexible working appeal meeting on 30 March 2022. The Claimant has also complained about similar such comments as part of her complaint of harassment related to sex with the complaint being listed as (g) in the first list of complaints of harassment related to sex. The comments complained about as amounting to harassment were that Remi Suzan had stated "*if you wouldn't have had children, you wouldn't have worked from home and nothing of this would have happened*". The Tribunal has already set out in its detailed conclusions regarding the relevant factual matrix in respect of those comments on the basis of concluding that those comments were not related to sex.

639. In common with the complaint of harassment, this complaint involves taking, out of context, comments made by Remi Suzan during the flexible working appeal meeting. Rather than taking the exact words as recorded in the transcript of the meeting as the basis for complaint, the Claimant has effectively paraphrased the words of Remi Suzan so as to apply her interpretation on them. The relevant parts of the exchange in question from the transcript [272-273] are set out in the Tribunal's findings of fact. The Tribunal has further sought to explain the correct context of the comments made by Remi Suzan in the conclusions arrived at regarding the complaint of harassment. In short, the Claimant was seeking to suggest that the home working arrangements which had been in place had worked very well, and this should be taken into account in dealing with her flexible working application, whereas Remi Suzan disagreed and suggested that "*I would say it hasn't been working well for three years because of how this is where we are now*" which was that the Claimant's "*relationship with the department, the management, the Company appears to have completely broken down*". The Claimant then suggested that the situation regarding her relationship with management was nothing to do with working at home which resulted in Remi Suzan replying "(y)*ou don't think that … had you not had children and continue to come into the office, then you'd be in exactly the same position*" [273]. The Claimant seems to have interpreted this as Remi Suzan suggesting that she would have been in a better position if she had not had her children. This resulted in Remi Suzan making it clear that all that he was saying was that "*there has been an impact*" as a result of the Claimant having "*worked remotely for three years*".

640. The Tribunal was satisfied that the comments of Remi Suzan were about the Claimant working from home. He was simply explaining his opinion about the impact that working from home had had on the Claimant's relationship with the Company, and, in particular, her managers. Understandably, the Claimant has not identified an actual comparator for the purposes of this complaint. The Tribunal was not satisfied that there was any evidence from which it could conclude that the same comments would not have been made to a hypothetical male comparator who had been largely working from home for three years (whether as a result of having had two young children or otherwise) in circumstances where his relationship with his managers had deteriorated, Remi Suzan considered that working from home was part of the explanation for this. The Tribunal considered that Remi Suzan was trying to be helpful by being frank as to the Claimant's situation and would have sought to have been similarly frank and helpful to a male employee in similar circumstances. For the reasons set out above, the Tribunal concluded that the complaint was not well-founded against either the First Respondent or the Third Respondent.

(k) "*The First Respondent's failure to permit the Claimant to undertake training and CPD, in particular to apply for Chartered Institution of Building Services Engineer's Membership during working hours when the First Respondent had permitted male colleagues to do so*".

641. In the Particulars of Claim, the Claimant claims that, in her appraisals for 2018, 2019 and 2020, she raised the issue of seeking, by way of CPD, to obtain CIBSE (Chartered Institution of Building Services Engineers) membership, but although she was told that she would be given time at work to do the application,

as a result of her workloads being so excessive, she never had time to do it [27]. However, she complains that, in her 2021 appraisal, she was told by Paul Starkey that she would not be allowed to do the CIBSE membership during working hours as the Company could not afford her doing that during working hours. She alleges that this amounted to sex discrimination on the basis that other male colleagues, including Paul Starkey himself, were allowed to do the CIBSE application during working hours.

642. The Tribunal accepted the position of the Company, as set out in its Grounds of Resistance [52], which was that CIBSE is a professional accreditation which the Company does not demand from its engineers, as not having membership does not preclude an engineer from doing his or her job. However, where an employee wishes to apply and go through the process to achieve accreditation the Company will do its best to facilitate this and support where it can. Thus, where employees have the spare capacity in their workload, it has been permitted for them to work on their applications during work time. However, the position of the Company was that work comes first and if an employee is busy, then the employee is expected to work on any application in his or her own time.

643. Looking at the appraisal forms for 2018 and 2020 (there does not appear to have been an appraisal in 2019 as a result of the Claimant being on maternity leave) it is clear that the Claimant's CIBSE membership application was understood by Paul Starkey to be ongoing in 2018 but in 2020 the Claimant was still needing to do the essay for her CIBSE membership. In the 2020 appraisal form [661] she had identified one of her aims for the next twelve months as being able to spend some time doing the essay for her CIBSE membership and Paul Starkey had added comments indicating that he agreed with the aims which had been identified for the next twelve months. In the event, although the appraisal form was submitted to HR in 2020, no further action seems to have been taken in undertaking the appraisal due to the pandemic [1035]. Additionally, the Claimant subsequently went on her second period of maternity leave. As a result, in completing the appraisal form for 2021, in reviewing the objectives set at the last appraisal, reference was made to the objectives from 2018 [1035] which included applying for CIBSE membership which had been stated to be ongoing at that time. As such, the Claimant seems to have repeated (or cut and pasted) the same comments as previously made in relation to identifying aims for the next twelve months which included being able to spend some time doing the essay for her CIBSE membership as well as learning Revit. The comments added by Paul Starkey to the original appraisal form indicate that he was essentially supportive in that he recognised that associate CIBSE membership was beneficial to career progression and stated that "*whilst the Company will support you where possible with your application, the forms and deliverables should be completed in your own time*" [1037].

644. When the appraisal form was updated later in 2021 the entry made in the section for reviewing training activities undertaken in the last twelve months recorded that no training and CPD had been carried out during 2020-2021 [701]. It was recorded that Revit training was proposed to be carried out when the Claimant was freed up from the 21 Moorfields project, which again shows that training was having to be arranged around existing work commitments.

645. In the discussion which then took place in the appraisal meeting on 2 August 2021 Paul Starkey made it plain that the Claimant would be given the time by the Company to learn Revit [1058] but that her essay for CIBSE membership was something that would be able to do in working time "*unless we were totally out of work*" [1065] which had been the position when the Claimant's husband, Paul Bowcock, and Paul Starkey himself had done the application "*years ago*" but "*we're not like that at the moment*". Notwithstanding this, the Tribunal notes that he went out of his way to offer the Claimant personal support in helping with any part of her application.

646. In her closing submissions regarding her constructive dismissal complaint, the Claimant had relied upon not "*being allowed to do CIBSE training at work, even when there was not enough work to do, they decided to ask me to learn Revit was a programme for a person beneath my grade and responsibility to, in their words "keep me busy*"" [paragraph 9.12.10]. The closing submissions further suggested that they "*asked me to learn a program that I didn't necessarily* (need) *the use should I have been doing my job*". This caused the Tribunal to be concerned that there was a significant element of inconsistency regarding this part of the Claimant's case (quite apart from the fact that the position of the Company regarding CIBSE training had not been conduct specifically relied upon by the Claimant for the purposes of her constructive dismissal complaint in either her Further Particulars or in the List of Issues). The position which it seemed was being adopted in the closing submissions seemed to be inconsistent with the recognition in the various completed appraisal forms that it was an important objective for the Claimant to complete Revit training (which in itself stemmed from the fact that Revit was increasingly used in the jobs that the Company was undertaking). It also seemed to be inconsistent with the explanation of the Claimant in the appraisal meeting on 2 August that she had been unable to find the time to undertake the Revit training [1058] and her recognition that if time could not be found that her to do the Revit training, then, realistically, finding (working) time to do the essay for CIBSE membership was unlikely [1065]. It also seemed to the Tribunal that the position now being advanced in the closing submissions was inconsistent with the Claimant's general complaint regarding excessive workload.

647. In conclusion, the Tribunal was satisfied that the Company had adopted a reasonable position regarding CIBSE given that it was more directly beneficial to an employee's career than to actual work with the Company. It might, perhaps, have been made clearer in the 2020 appraisal form that Paul Starkey's agreement to the aim of the Claimant being able to spend some time doing the CIBSE membership was qualified by the need for work commitments to come first. He made the position clearer in his comments on the 2021 appraisal form to the effect that the forms and deliverables "*should be completed in your own time*". This reflected the reality of the position as was acknowledged by both the Claimant and Paul Starkey in the appraisal which was that the Claimant would not get to do this part of the application in work time "*unless you are totally out of work*" [1065]. This had been the position, years previously, when her husband and Paul Starkey had completed their applications for CIBSE in membership.

648. In the circumstances, the Tribunal did not accept that there was a relevant difference in treatment. Paul Starkey had been able to do his application in work

time because of the circumstances which had existed at that time, but this was simply not the position when the Claimant was looking to complete her application. In any event, if, contrary to the Tribunal's conclusions, there was any relevant difference in treatment, the Tribunal was not satisfied that the Claimant had proved facts from which the Tribunal could infer that the reason for the difference in treatment was her sex. Further or alternatively, the Tribunal accepted the explanation put forward on behalf of the Company for its treatment of the Claimant in this regard, namely that whilst CIBSE membership was beneficial to the Claimant in terms of her development and advancement, it was not sufficiently beneficial to the Company to be given priority over the Claimant's existing work (or Revit training).

(l) "*The First Respondent's denial to permit the Claimant to leave a weekly team meeting in order to express milk as she was leaking milk. This is also pregnancy discrimination as the need to express milk arose as result of the pregnancy*".

649. A complaint arising out of the same alleged circumstances was also put forward as one of harassment related to sex (listed as (a) in the Claimant's first list of complaints of harassment related to sex). In dealing with this alleged incident as a complaint of harassment related to sex, the Tribunal has set out its conclusions in relation to the relevant factual matrix. Those conclusions are also relevant in so far as the alleged incident is complained about as amounting to direct sex discrimination. In short, the Tribunal was not satisfied that the Claimant was denied permission to leave the meeting in circumstances where it was appreciated that she needed to do so in order to express milk as she was leaking milk.

650. No actual comparator has been identified for the purposes of any complaint of direct sex discrimination. The issue becomes whether any comparator is needed. In cases where the treatment complained of is based on pregnancy as distinct from the consequences of pregnancy (such as a pregnancy-related illness), the principle is well established (on the basis of case law emanating originally from the European Court of Justice) to the effect that pregnancy is a condition unique to women and it therefore makes no sense for a claimant to be required to compare her treatment with the treatment that would have been accorded to a man in similar circumstances (see *Webb v EMO Air Cargo (UK) Limited [1994] ICR 770, ECJ*, and *Commissioner of the City of London Police v Geldart [2021] ICR 1329, CA*). The position is potentially different in relation to the period after pregnancy and maternity (see *Brown v Rentokil Rentokil Limited [1998] ICR 790, ECJ*, and *Lyons v DWP Jobcentre Plus [2014] ICR 668, EAT*). However, in EU law, specifically in relation to breastfeeding, the European Court of Justice case of *Otero Ramos v Servicio Galego de Saúde [2018] ICR 965*, did hold that less favourable treatment of an employee because she is breast-feeding is contrary to the Equal Treatment Directive. This was effectively applied in domestic legislation from 2024, in that Equality Act 2010 section 6(a), which provides that "*less favourable treatment of a woman includes less favourable treatment of her because she is breast-feeding*" only became applicable to employment cases from 2024.

651. Either way, the complaint is capable of a straightforward answer. Based on the Tribunal's conclusions that the decision-maker was not aware of the Claimant's reasons for wanting to leave the meeting, it could not be said that any alleged

treatment was because of the Claimant's pregnancy or maternity or because she was breastfeeding. Alternatively, in as far as the issue arises, had a male employee needed to leave the meeting in pressing and personal circumstances, without the person who was being asked for permission being aware of the circumstances, the position would have been the same.

652. However, the List of Issues raises the possibility that the complaint should also be treated as one of pregnancy discrimination. The point can be made that any complaint really related to maternity rather than pregnancy. There are, though, a number of difficulties with treating the complaint as one of pregnancy or maternity discrimination.

653. The alternative allegation of pregnancy discrimination was made by the Claimant in providing the Further Particulars [95]. The difficulty with this is that a complaint of pregnancy discrimination was not made as part of the Claim. This is illustrated by the fact that the box in relation to pregnancy discrimination was not ticked on the ET1 Form of Claim [7]. Although the Claimant was subsequently given permission to amend the Claim, this was only to add the complaint of unfair dismissal and notice pay. As such, the Tribunal was not satisfied that the Claim before the Tribunal concluded one of pregnancy or maternity discrimination.

654. In any event, in so far as the Further Particulars and List of Issues had referred to a complaint of pregnancy discrimination, the Tribunal concluded that such a complaint was outside the scope of the provisions of Equality Act 2010 section 18 which were in place at the time, and which provided protection against pregnancy and maternity discrimination. The provisions of Equality Act 2010 section 18(2) which were then applicable, had the effect, when applied to the Claimant's case, that the unfavourable treatment being complained about would have needed to have occurred "*in the protected period in relation to a pregnancy of hers*". The protected period was that defined by Equality Act 2010 section 18(6) and ran from the beginning of her pregnancy until she returned to work at the end of her maternity leave. It could not be said, for the purposes of Equality Act 2010 section 18(5), that the alleged decision giving rise to the alleged treatment about which she complains, namely refusing to allow her to leave a meeting, had occurred during the protected period. As such, the Tribunal was not satisfied that any such complaint fell within the statutory scope of pregnancy or maternity discrimination as provided for in Equality Act 2010 section 18.

655. Alternatively, and in any event, the Tribunal was not satisfied as to the merits of this complaint as one of pregnancy or maternity discrimination. The issue was ultimately one of whether the unfavourable treatment was because of the pregnancy or maternity. Based on the Tribunal's conclusions that the decision-maker was not aware of the Claimant's reasons for wanting to leave the meeting, it could not be said that any alleged treatment was because of the Claimant's pregnancy or maternity.

656. Outside of the protected period, it remains open to a woman to argue that any treatment meted out to her because of her pregnancy or maternity amounted to less favourable treatment because of sex (contrary to Equality Act 2010 section 13). Any such complaint has been considered above. However, it should be noted that Equality Act 2010 section 13(1) refers to less favourable treatment "*because*

of a protected characteristic", and pregnancy and maternity appears in the list of protected characteristics in Equality Act 2010 section 4. Thus, as well as prohibiting direct sex discrimination, Equality Act 2020 section 13 covers direct discrimination because of the protected characteristic of pregnancy and maternity. In such cases, it may similarly be arguable that no comparator is needed. However, any such complaint would also fail in the light of the Tribunal's conclusion that the decision maker was unaware of the Claimant's reasons for wanting to leave the meeting. Any withholding of permission for the Claimant to leave the meeting was not based on her pregnancy or maternity. It was not because of her pregnancy or maternity.

(m) "*The Claimant was excluded from project gatherings where all the other males were invited*"

657. The occasion specifically complained about in the Particulars of Claim was in March 2022, when the head of the department organised some drinks for the Claimant's team but the Claimant was excluded from this social event and she only found out that the event was taking place after it was organised because one of her colleagues told her [22]. The Case Management Order of 24 August 2022 had ordered that the Claimant should provide particulars setting out the acts or omissions claimed as less favourable treatment on the grounds of sex, the names of any male comparators and the basis upon which they were male comparators. This resulted in the Claimant giving Further Particulars setting out the complaints listed as (a) to (l). The Further Particulars did not identify a complaint of direct sex discrimination through being excluded from a social event. It appears to have subsequently been added to the List of Issues which appear in the Bundle [95] as complaint (m) in the list of complaints of direct sex discrimination (complaint (n) below appears to have been similarly added to the List of Issues in the same way).

658. In the Claimant's grievance [189] and in her grievance appeal [313-314], she had also raised the issue that she had not been invited to drinks after work which had been arranged for David Hines, who had been on furlough for some time. In the grounds of her grievance appeal, the Claimant stated that she was not invited but a "*colleague advised me that those drinks will be taking place for him*". This occasion had clearly taken place earlier in 2021, because it was raised by the Claimant at her appraisal meeting of 2 August 2021 and suddenly discussed with Paul Starkey [1078]. In the Claimant's grievance appeal document, she sought to point to supposed inconsistencies regarding the answers given by Paul Starkey and Glenn Sheldrake in relation to this issue when interviewed as part of the grievance investigation. However, in fairness, this would have been many months later. The Tribunal was satisfied that the most accurate description was probably that given by Paul Starkey in the appraisal meeting where he was describing informal arrangements made by Glenn Sheldrake which would clearly have involved arranging for David Hines to come in after work, and also involved asking Paul Starkey to change his day for this purpose, but was otherwise a fairly impromptu gathering in terms of those who are in the office on that day being asked if they wanted to come out for a drink. The Tribunal notes that Bhupinder Padda states that he was not invited to the get-together or even aware of it [360 and 454] although, in fairness, Paul Starkey had described the get-together is largely being a case of asking whoever was in the office on the day and suggested that Bhupinder Padda had "*come along for one*" [1079].

659. The specific occasion which was referred to by the Claimant in her Particulars of Claim involved members of the Claimant's team going for a drink after work on 3 March 2022. The Claimant seems to have been aware of the arrangements in advance in that, in her letter of grievance dated 1 March 2022 she stated that "*I just found out because one of my colleagues have told me they have been invited*" [188]. In fact, in her Statement of Evidence, she stated that she had found out about the gathering from Warren Mullem on 14 February 2022 [C61 and 786]. Her handwritten note of that date was to the effect that she was told that only the engineers were being invited which she interpreted as admitting that she was not an engineer on the project.

660. This complaint of direct sex discrimination was put forward by the Claimant on the basis that she was being treated differently from male employees. A difference of treatment does not, on its own, provide a basis for the Tribunal to conclude that the difference in treatment is on the grounds of sex. The Tribunal was not satisfied that the Claimant had proved facts from which the Tribunal could infer, in the absence of any other explanation, that the treatment was at least in part the result of the Claimant's sex. In any event, ultimately, the Tribunal concluded that it was more likely than not that the reason for any arrangements not having included the Claimant was that she was not actually in work on the day or days in question. The get together on 3 March 2022 was arranged on a Thursday. The Claimant had made clear her displeasure about being expected, or even just requested, to attend work on any days other than the Monday when she was due to be in the workplace. In the circumstances, it was not surprising that arrangements were made which did not include her, given that the arrangements were simply made on the basis of going for a drink after work.

661. For the sake of completeness, although it was not clear that it was a complaint before the Tribunal, the Tribunal was also not satisfied that the Claimant had proved facts from which the Tribunal could infer, in the absence of any other explanation, that not involving the Claimant in any gathering that had taken place with David Hines whilst he was on furlough was at least in part the result of the Claimant's sex. Similarly, the Tribunal concluded that it was more likely than not that the reason for any arrangements not having included the Claimant was that of the informality of the arrangements for having a drink after work and the Claimant not actually being in work on that day. In any event, any complaint about this gathering would be significantly outside the primary time limit and would fall to be dismissed on the basis of the Tribunal's conclusions on the issue of time limits.

(n) "*The Claimant's mental health was not taken* (into) *consideration, despite the Company having an occupational health report, unlike the mental health of her male colleagues*".

662. In the Particulars of Claim it was not clear that this was an issue which was being raised as amounting to direct sex discrimination. Insofar as the issue was raised in the Particulars of Claim, it was suggested that the Company failed to make the reasonable adjustments recommended in the occupational health report and, by not doing so, had failed to fulfil its duty of care to the Claimant [30-31].

663. In common with the complaint dealt with at (m) immediately above, this was a complaint which did not appear in the list of acts or omissions amounting to direct sex discrimination which the Claimant was ordered to produce by way of Further Particulars. Part of the Case Management Order had included the requirement to identify any comparators being relied upon by the Claimant. Clearly, in relation to this complaint, since the complaint was not listed in the Further Particulars, it follows that the Further Particulars also fail to comply with the need to identify any possible comparators. The complaint was subsequently added to the List of Issues which appeared in the Bundle [95], but at this point no individual comparators were identified beyond the assertion that the Claimant's mental health had not been taken into consideration "*unlike the mental health of her male colleagues*". In these circumstances, it was difficult to see the basis upon which the Respondent could respond to the complaint, or the basis upon which the complaint could be addressed by the Tribunal.

664. In the alternative, the Tribunal was not satisfied that the Claimant had proved facts from which the Tribunal could infer, in the absence of any other explanation, that the treatment was at least in part the result of the Claimant's sex. In the first place, the Tribunal did not accept the premise involved in the complaint, namely that, despite having an occupational health report, the Claimant's mental health was not taken into consideration. The very purpose of the referral [214-216] was to take into consideration the Claimant's mental health. Having heard evidence from Tom Delves, the Tribunal accepted that he acted in good faith in making referral and was genuinely seeking occupational health advice on behalf of the Company, in relation to the questions listed in the referral [216]. This was not a sham exercise. The report [217-219] referred to the Claimant's perceived work-related stress as a result of the work-related stressors which she reported. She wanted to discuss her concerns with HR so that her allegations could be investigated. The report recognises the Claimant had already raised a grievance regarding her allegations. The report raised the possibility the Claimant being allowed to work from home for the entire week while the reported work-related stressors were investigated and the process concluded. It also suggested assessing her workload and reducing it if it was deemed to be excessive.

665. In the flexible working appeal meeting on 30 March 2022, the Claimant raised the issue of whether the occupational health recommendations would be taken into account. Oliver Dawson suggested that the report had only been received that day, whereas the Claimant suggested that it had been received the previous Friday. Either way, it is clear that there would have been a delay in the report being received as the report itself refers to the report having been provided to the Claimant before being provided to the Company. It was made clear in the flexible working appeal meeting that the Company would be giving consideration to the recommendations made in the report and this would be separately discussed with the manager responsible for the referral [277].

666. A meeting to discuss the occupational health report was arranged with Tom Delves but the Claimant e-mailed on that day to say that she was taking the rest of the day off sick. She was subsequently signed off work for a week on 6 April 2022. The meeting was rearranged 22 April 2022. By the time that the meeting took place, Tom Delves had clearly been able to obtain the agreement of the Claimant's

managers to the Claimant working entirely from home whilst the Claimant's grievance was resolved (the Claimant had by this point in time appealed against the decision of Angela Foster). Steps were also being taken to check the position in respect of the Claimant's workload, as outlined in the Tribunal's findings of fact, with it been confirmed that her workload was not considered to be excessive and was commensurate with the workload of other members of the team [TD9 and 368].

667. On the basis of the findings of fact and conclusions set out above, the Tribunal was satisfied that the Claimant's mental health had been taken into consideration, in particular through seeking occupational health advice, discussing that advice with the Claimant, and acting on that advice. In any event, the Tribunal was not satisfied that there was any basis for concluding that an appropriate male comparator would have been treated differently or that an appropriate hypothetical male comparator would have been treated differently.

668. A similar complaint was included at paragraph 15(i) of the Further Particulars [72] as a complaint against the Second and Third Respondents alleging that the Claimant did not receive support when the "*Respondent*" was made aware of the Claimant's mental health issues, with reference being made to an e-mail of 14 February 2022 sent to Glenn Sheldrake [338] and also to the occupational health report dated 22 March 2022 [217]. The complaint does not make clear the basis for alleging specific liability on the part of the Second and Third Respondents or, indeed, the type of contravention of the Equality Act 2010 being alleged. In fact, the wording of the complaint was effectively identical to the complaint listed at (n) in the list of complaints relied upon for the purposes of the complaint of constructive dismissal [91]. It follows that the conclusions of the Tribunal as to the relevant factual matrix, as set out in dealing with the complaint listed as (n) in the list of complaints relied upon as giving rise to the alleged constructive dismissal, are also relevant in dealing with this complaint. On the basis of those conclusions, the Tribunal was not satisfied that there was a breach of the Equality Act 2010 for which the Second and Third Respondents were liable in relation to the complaint set out at paragraph 15(i) of the Further Particulars.

Adjustments

669. In addition to complaint (n) as to not having received support when she raised issues regarding her mental health [91], the list of complaints relied upon for the purposes of the Claimant's constructive dismissal case also included a complaint that the First Respondent failed to implement the recommended adjustments contained in the occupational health report (complaint (o) in that list of complaints relied upon as giving rise to a constructive dismissal [91]) and a complaint that the First Respondent "*failed to do reasonable adjustments*" (which was one of the complaints which did not appear in the Further Particulars [69] but appeared subsequently to have been added as complaint (x) to the list of complaints in the List of Issues under the heading of constructive dismissal [93].

670. Further, in the list of complaints being made against the Second and Third Respondents, paragraph 15(j) of the Further Particulars set out a complaint that the "*Respondent*" (it was not clear to which of the additional Respondents reference being made) "*failed to implement the recommended adjustments as contained in the report from Occupational Health Consultancy dated 22nd of March*

2022" and the "*Claimant was subject to direct Disability discrimination contrary to section 6 of the Equality Act 2010*". As already discussed in the course of the reasons for this Judgment, the Tribunal was not satisfied that the Claimant's case before the Tribunal included a complaint of disability discrimination (whether as a breach of the duty to make reasonable adjustments or otherwise) which the Respondents had to meet, or on which the Tribunal had to adjudicate. The Case Management Order specifically identified the types of discrimination to be considered as part of the Claim [paragraph 4 at 57], which did not include disability discrimination. The Claimant was not given permission to add a complaint of disability discrimination. It is also noteworthy that paragraph 8 of the Case Management Order had directed the parties to agree a final List of Issues and the List of Issues in the Bundle contains no complaints of disability discrimination (with any issue in respect of "*adjustments*" being raised purely as one of the matters relied upon as giving rise to a breach of the implied term of trust and confidence for the purposes of the complaint of constructive dismissal.

671. Further or alternatively, the Tribunal has considered the complaint as to adjustments in dealing with the Claimant's constructive dismissal case and on the basis of the conclusions set out in dealing with the complaints listed as (n), (o) and (x), the Tribunal was satisfied that, in the event that any duty arose under Equality Act 2010 section 20 to make the adjustments being contended for at (n), (o) and (x) in the List of Issues in respect of constructive dismissal, or those being contended for at paragraph 15(g) of the Further Particulars, then there was no breach of any such duty by the Respondents. In short, on the basis of the Tribunal's findings of fact and the Tribunal's conclusions in relation to those complaints, the adjustments being recommended in the occupational health report were implemented and / or the steps taken in relation to those recommendations amounted to making such adjustments as would have been reasonable for the purposes of Equality Act 2010 section 20.

Conclusion as to complaints of discrimination

672. In looking at the Claimant's various complaints, it needs to be appreciated that there is a danger in breaking down the Respondents' conduct into a series of separate acts or omissions, so that the conduct in issue should also be looked at overall. This also reflects the requirement that in considering whether there are facts from which the Tribunal could infer, in the absence of any other explanation, that the treatment was at least in part the result of the Claimant's relevant protected characteristic, all of the evidence as to the facts before the Tribunal must be considered, not just evidence adduced by the Claimant.

673. As such, it was necessary to take a step back from looking at the individual complaints and consider the position overall. In this regard, the Tribunal had regard to the history set out above in the findings of fact. The narrative which the Claimant effectively sought to put forward was that of an employer which had been unsympathetic and unresponsive to her position as an expectant mother and then as a mother, dating back to the point in time of her first pregnancy, with this mindset on the part of the Respondents giving rise to the alleged discriminatory treatment about which she complained. Essentially, she was saying that the evidence regarding her treatment, whether viewed in terms of the specific alleged acts of discrimination of which she complained, or viewed as a whole, amounted to

evidence from which the Tribunal could conclude that any relevant treatment was on the grounds of sex and / or in breach of the Equality Act 2010. Although there had clearly been problems between the Claimant and the Company at the time of her first pregnancy ,as the Claimant was not satisfied with the response of the Company in relation to issues such as maternity pay and agreeing home working arrangements for her return to work, once the Claimant returned to work from her first period of maternity leave, there was a relative paucity of evidence to suggest that there were significant difficulties with working relationships. In the completed appraisal form for 2020 and in the original completed appraisal form the 2021, the Claimant had been content to suggest that she had been helped by the support of her bosses [662 and 674]. In her evidence, the Claimant suggested that it was only after her return from a second period of maternity leave that her working relationship with Paul Starkey had deteriorated and sought to suggest that there was a change in attitude towards her which was discriminatory. There certainly seems to have been a significant downturn in the Claimant's relationships with her managers following her return to work after the second period of maternity leave. It is very clear that the Claimant had become extremely disaffected with her employment circumstances with the level of this having increased over a fairly short period of time. Although the Bundle contained relatively little documented evidence regarding the position in the first three months or so following her return, it was clear that there had been a radical change by the time that she was completing the updated appraisal form for the appraisal on 2 August 2021. The position put forward on behalf of the Respondents, both in the course of cross-examination and in the course of closing submissions, sought to suggest that the root problem was that of the Claimant struggling to cope balancing childcare and working from home in that she was looking after her baby at home [156] and whilst her older child was in nursery, this did not include Wednesdays, as she had not been able to get a nursery place for that day [156]. This was despite the Claimant being recorded as having confirmed, in the meeting to consider her flexible working request on 21 October 2020, that she had childcare arrangements in place which would not affect her hours or her ability to meet the requirements of her work.

674. The Tribunal considered that a significant factor in the worsening working relationship between the Claimant and her managers was that she was particularly aggrieved that the working arrangements in place following her return from her second period of maternity leave did not involve the same arrangements in respect of core hours as had been in place during her first period of maternity leave which only required her to be available for four hours during normal working hours. By contrast, when she returned to work in April 2021, her core working hours were effectively 8:30 am to 5 pm with one hour for lunch. From the Claimant's actions in updating her appraisal form for the appraisal meeting with Paul Starkey on to August 2021, and from exchanges which are recorded as having taken place during the appraisal meeting itself, it is clear that the Claimant had developed a negative mindset regarding her employer and her managers through which their actions came to be interpreted as amounting to discrimination. Ultimately, the Tribunal has concluded that this interpretation on the part of the Claimant was incorrect and unfair.

675. In conclusion, taking a step back and looking at the totality of the Claimant's case, the Tribunal did not conclude that the narrative or interpretation of events

which the Claimant was putting forward, by which, on her case, she was being subjected to discriminatory treatment on an ongoing basis, amounted to a correct conclusion.

Constructive unfair dismissal

676. The Tribunal turns to consider the Claimant's constructive dismissal complaint. For these purposes, the Further Particulars identified that the contractual terms upon which the Claimant was relying was the implied term of trust and confidence and the Further Particulars set out a list of "*incidents*" which "*each amount to a repudiatory breach of that implied term of the contract by the Respondent and certainly taken cumulatively are a repudiatory breach entitling the Claimant to leave her employment and claim constructive dismissal*" [66].

677. The Tribunal notes that the Claimant's case, as confirmed in her written closing submissions was that although "*I had waived the breaches of contract on numerous occasions, I was no longer willing to do so as my mental health kept being severely damaged*" and "*I have suffered considerably detriment due to my recent treatment by the Respondent to my health, well-being, and ultimately to my career*". The Claimant sought to contend that there was a cumulative breach of the implied term of trust and confidence as a result of her treatment going back to 2018. As such, this involved considering a number of historic complaints as well as the treatment of the Claimant in the period leading up to her resignation.

678. The Tribunal began by considering the individual complaints which are claimed by the Claimant to have either, in themselves, breached the implied term of trust and confidence, or are claimed to have contributed to a cumulative breach of the implied term of trust and confidence.

(a) "*The First Respondent's behaviour showed discrimination by sex towards the Claimant when she got pregnant with her first child during 2018. The Claimant informed the First Respondent about it, the First Respondent told the Claimant that it will reduce her hours after her baby was born. The First Respondent does not inform the male comparators that they will have reduced hours after their baby was born. Comparators namely Mark Basker, Warren Mullem and Paul Bowcock*".

679. The Tribunal was not satisfied that the contemporaneous evidence supported the Claimant's contention that she was told that the Company "*<u>will</u> reduce her hours after her baby was born*". Moreover, this clearly did not happen. The Claimant's Statement of Evidence was to the effect that she was told this by Remi Suzan but, on her case, in her Statement of Evidence, it was not pursued when she stated that she was not happy with it. The context was that of the Claimant asking to work from home and an e-mail from 15 November 2018 [653] sent by Remi Suzan updating various managers as to the discussions taking place which refers to the Claimant asking what "*are we prepared to offer in terms of hours whilst working at home*" and records "*some discussion of her working hours reducing to start the process and then upping or dropping the hours to suit*". The e-mail stated that "*Marta is opposed to this issue believes she should start at her normal hours and reduce down if it proves too difficult to maintain*". However, from this, the Tribunal concludes that a discussion was taking place as to the hours that

the Claimant would work on her return from maternity leave if she was working from home. The reference to changing the hours "*to suit*" suggests that this would involve giving consideration to what suited the Claimant, as well as the Company. From the minutes of the meeting which the Claimant had with Tom Delves on 23 November 2018 [644-655] it can be seen that the Claimant was extremely upset as her interpretation of the position was that the Company was trying to get rid of her, was being cruel to her and she did not trust the Company. She was clearly referring to the possibility of legal proceedings. Similarly, in her earlier meeting with Michelle Bennett on 20 November 2018 [1191] she talked about resigning and taking the Company to a Tribunal. Although she made reference to comments having been made by Remi Suzan about reducing her hours, her main cause for dissatisfaction seems to have been that she had not yet got the Company to confirm its agreement as to the arrangements which would be put in place for her to work from home. The Claimant made a written flexible working request on 30 November 2018 and by letter dated 15 January 2019 it was confirmed that it was agreed that the Claimant would work from home for four days per week with no reduction in her hours.

680. On the basis that the Tribunal does not conclude that the Claimant was told that the Company "*<u>will</u> reduce her hours after her baby was born*", any comparison made with Mark Basker, Warren Mullem and Paul Bowcock is effectively made on a false premise in that, if, as the Claimant asserts, they were also not told this, then they were in the same position as the Claimant in that respect.

681. Ultimately, the Tribunal was not satisfied that this part of the Claimant's complaint involved a breach of the implied term of trust and confidence. There were discussions with the Claimant about working arrangements which might be put in place for a return to work with the Claimant indicating that she was dissatisfied with position and approach of the Company within these discussions, but ultimately a flexible working request resulted in the Company putting in place flexible working arrangements which were favourable to her for a return to work was, It was also persuaded to change its position in relation to maternity pay to her advantage.

(b) "*The Second and Third Respondents' lack of understanding and unreasonable approach to the Claimant's first Flexible Working Application in 2018 when they made comments such as:*

(i) "*why should pregnant women get different treatment, I could not work at home for a year when my children* (were) *born"* (David Gratte)".

682. The source for this alleged comment was the Statement of Evidence of Michelle Bennett in support of her own Claim [1191]. She was suggesting that the comment was made to her, by David Gratte, when they were discussing dealing with the Claimant's request to work from home at the time of her first pregnancy. This was not a comment made to the Claimant. The comment was denied by David Gratte. The Tribunal accepted his evidence as reliable. This was reinforced by his candour in admitting other comments he was alleged to have made. The Tribunal had not heard evidence directly from Michelle Bennett. She was not called as a witness. The Tribunal was referred to an extract from a document which appeared to be a grievance investigation report [1195-1196] into a grievance made by

Michelle Bennett although the investigation seems to have been taken place after her resignation. This particular alleged comment does not seem to have been raised as part of the grievance, whereas other alleged comments were. The Tribunal was not satisfied that the written evidence from Michelle Bennett was reliable. In places it appeared to be inconsistent with the contemporaneous documents. The individual investigating her grievance (JT) pointed out that the substance of some of the complaints being made by Michelle Bennett was rather inconsistent with a resignation letter which referred to a "*really great experience with Gratte Brothers*", whilst hoping that her friendship with David Gratte continued for many years to come. It was pointed out that it was not plausible that a resignation letter of this nature would be drafted by an experienced HR professional who considered that they had been discriminated against and bullied.

(ii) "*"they should have made sure they could financially afford a baby before coming pregnant""* (David Gratte).

683. This comment, which David Gratte accepted having made in an HR meeting at which the Claimant was not in attendance, also formed the basis for a complaint of harassment related to sex. As such, the Tribunal relies upon the conclusions already set out above in relation to the relevant circumstances of this comment. Again, the source for the comment which is being relied upon by the Claimant is that of a complaint of Michelle Bennett and, in relation to this comment, an admission made by David Gratte in the course of the investigation by JT.

(iii) "*"Marta had asked to work from home as she had just got married, they also had a large 4 bedroom house they had just purchased and can't afford the time off, but I feel it was not the business position to support her personal financial position and maybe she should not have fallen pregnant""* (Remi Suzan).

684. The source for this alleged comment is the Statement of Evidence of Michelle Bennett in support of her own Claim [1190]. The comment was alleged to have been made by Remi Suzan to Michelle Bennett when discussing the Claimant's request to work from home. The comment was not alleged to have been made to the Claimant. For the reasons previously discussed, the Tribunal did not regard the evidence of Michelle Bennett as reliable. It is also significant that, although a comment similar to that alleged at (b)(ii) above seems to have been made as one of the allegations of Michelle Bennett investigated by JT, the comment allegedly made by Remi Suzan as alleged at (b)(iii) was not raised as part of the same complaints by Michelle Bennett. The Tribunal could not be satisfied that words to this effect was said by Remi Suzan. The Tribunal was satisfied that the Company needed some persuading to enhance maternity pay, and, in this context, there was discussions with Michelle Bennett where the managers concerned appeared unsympathetic to the Claimant's position. However, it was Remi Suzan who granted the Claimant's flexible working application. Moreover, in September 2020 the Claimant was happy to put her name to a Statement of Evidence [1014-1018] which described Remi Suzan as having been supportive and reassuring to her at this time.

685. In conclusion, in relation to this part of the Claimant's complaint, the Tribunal was not satisfied that there was a breach of the implied term of trust and

confidence. The comments alleged ((b)(i) to (iii) above) were not made to the Claimant although she later became aware of them with Michelle Bennett alleging that such comments had been made in support of her case. However, significantly, the Claimant gave a Statement of Evidence stent of evidence on the half of the Company in defending the claim of Michelle Bennett, which gave a very positive impression of her relationship with her employer. The Tribunal was not satisfied that any knowledge on the part of the Claimant regarding alleged comments reported by Michelle Bennett had any contractual impact at such time. Rather, the significance of the alleged comments was that the Claimant clearly realised that she could also seek to rely upon them support of her complaints against the Company.

(c) "*The First Respondent's failure to address the misbehaviour towards the Claimant in March 2020, during a meeting,* (Dean Robson) *quipped to the Claimant to "go and make the tea" in front of all the other attendees when he had clearly lost a debate with her due to his unprofessional demeanour prior to that point*".

686. *The Tribunal refers to its conclusions above where it has dealt with the alleged conduct of Dean Robson as a complaint of harassment related to sex. In the context of the Claimant's constructive dismissal case, the actual complaint being made also involves a complaint as to a failure on the part of the Company to deal with the alleged conduct. The alleged incident is described by a former employee, David Sanders, the CAD department manager at the time, in an undated text message [625] and in an e-mail dated 19 April 2022 [871] which was supposedly providing a reference. A precise date is not given so that the incident could potentially date to any time in the period between September 2019 and March 2020. In the e-mail, David Sanders comments generally that, at this time, "I was finding it tricky to navigate a situation where as a manager my instinct was to step in and protect members of my team, but at the same time I wanted to allow Marta the space to confront the situation as an equal, rather than me take away that opportunity and potentially undermine her standing". It is not clear that this comment as to his approach was in relation to the specific incident or "this time" more generally, but clearly David Sanders chose to manage the situation with a light touch, which would be understandable if his assessment of the situation (which is relied upon by the Claimant) was correct. The issue does not seem to have been raised by the Claimant at the time. Indeed, as has been seen, she provided a Statement in September 2020 which specifically stated that "I constantly feel like I am supported by managers and if I didn't I would have left the Company by now" [1018].*

687. *In conclusion, the Tribunal was not satisfied as to the precise detail of this incident, save that there was friction between the Claimant and Dean Robson which resulted in a comment made with neither the Claimant nor David Sanders at the time considering that it warranted being taken any further. The Tribunal did not consider that it was an incident which had any contractual significance. Its significance would appear to be that, after David Sanders had referred to it over two years later, the Claimant thought that it was material which she could rely upon in support of her complaints against the Company. The actual complaint made at (c) above was that the Company failed to address the issue, but had the Claimant considered that it was an issue which needed to be addressed, she could have*

raised it herself. She had no difficulty in raising matters which were to her dissatisfaction, both before and after this point in time. The complaint is also inconsistent with the fact that she was prepared to sign a Statement in September 2020 describing her managers as being very supportive.

(d) "*The First Respondent's denial to allow the Claimant to work the core hours that she requested in September 2020 that she had previously had in place from 15th January 2019, and the comment made by Paul Starkey "it is what it is, and if you don't like it leave!"*".

688. The Claimant's first flexible working application which was made in respect of the period following her return to work after her first pregnancy was agreed on the basis that they would be core hours of working which would need to be agreed at her return to work meeting and that these core hours would "*be a minimum of four hours per day*" [657]. This seems to have meant that the Claimant would need to be available at certain times each day, generally two hours in the morning and two hours in the afternoon, and would then be free to make up the remaining hours during the day at times convenient to her. However, an arrangement in respect of core hours was not agreed as part of her second flexible working application in respect of the period following her return to work after second pregnancy. The decision letter dated 13 November 2020 [138] simply provided for her working hours to be from 8.30 am to 5.00 pm with an unpaid lunch break of one hour. It had been confirmed during the meeting that the Claimant had childcare arrangements in place which would not affect her hours or her ability to meet the requirements of her work [136]. As such, there was no reason for her not to be working her normal contractual hours. It was understandable that the employer would want to maximise an employee's availability during normal working hours, particularly in a client facing business.

689. In his oral evidence, Paul Starkey denied the allegation that he had used the words *"it is what it is, and if you don't like it leave*", although he accepted that the words alleged in the first part of the phrase ("*it is what it is*") are words that he might use. The Claimant's Statement of Evidence did not provide evidence or refer to any contemporaneous documentation in relation to having raised concerns with Paul Starkey regarding core hours not being agreed or any comments made by him in response to those concerns [C33-34]. In her grievance [189] she had asserted that "*my directors*" (plural) used the phrase concerned when the Claimant took issue with something or was in disagreement with something. However, in the grievance meeting, it became clear that she was saying that this phrase had not just been used to her but was a phrase which Paul Starkey used in responding to members of staff generally. She commented sarcastically that he was a "*nice approachable person to work with*" but did not at this point give a specific example of the phrase being used with her. Rather, she relied upon Warren Mullem having confirmed having heard Paul Starkey use such a phrase but he did not indicate the context in which he had heard this being used [892]. In the circumstances, on the balance of probabilities, the Tribunal was not satisfied that the words alleged by the Claimant had been used by Paul Starkey in responding to concerns raised by the Claimant regarding the position in respect of core hours.

690. The Tribunal was not satisfied that this complaint involved any breach of the implied term of trust and confidence. The Company was contractually entitled to expect the Claimant to be available during its normal working hours rather than only during more restricted core hours.

(e) *"Extremely high workloads for the Claimant that were ignored"*

691. This complaint was also pursued as a complaint of harassment related to sex (the complaint was listed as (c) in the second list of complaints of harassment related to sex in the List of Issues) and the Tribunal's conclusions as to the factual basis for this complaint have already been set out in dealing with that complaint of harassment.

692. In conclusion on this issue, while the position in respect of workloads may not have been satisfactory, the Tribunal was not satisfied that the extent of any such issue was such as to give rise to a breach of contract or contribute to such a breach. In the appraisal meeting in August 2021 the Claimant's manager had made it clear there was no expectation upon her to be working anything other than normal working hours. It was clear from that meeting that she had been taking it upon herself to work additional hours. It was also made clear to her that she should not be doing so. Paul Starkey explained that, if there was an issue in terms of being asked to work more, then she needed to come to him. In so far as the issue as to workloads was subsequently raised, it was largely in very general terms. The position was subsequently reviewed in the light of the occupational health advice, and the Claimant's workload was found to be commensurate with that of other team members and not excessive.

(f) "*The First Respondent's demands to attend the office on Wednesdays when the First Respondent was aware that the Claimant did not have childcare for a Wednesday. When the Claimant raised this with the First Respondent she was told by Paul Starkey that she needed to attend on the Wednesday "because I say so and I pay your mortgage"*".

693. When home working arrangements were put in place as a result of the Claimant's first flexible working application, the Claimant was able to work from home for four days per week and attend the office one day a week. This effectively reflected the position of the Company that there was a business need for the Claimant to attend the workplace one day a week. The day that the Claimant was due to attend the workplace was Monday. Thus, when the Claimant was unable to attend a Monday, there were occasions when she was asked to attend on another day during the week.

694. The Claimant's second pregnancy resulted in a second flexible working application, the outcome to which was notified to the Claimant by letter dated 13 November 2020 [138]. The letter confirmed that "(y)*ou will attend the Regents wharf office for 1 day per week*". The next sentence stated that this "*has provisionally been arranged for Monday but may be subject to change*". At various points in the documentation, the Claimant has interpreted this as having the effect that she could only be required under a contract of employment to attend the office on a Monday, so that the Company could not require her to attend on any other

day. In fact, the letter specifically required the Claimant to attend the office one day per week. The arrangement for this to be on a Monday was described as provisional and subject to change.

695. The Tribunal was referred to various occasions when the Claimant was not able to attend work on a Monday and the issue of the Claimant attending work on a Wednesday was raised. There was an occasion in May 2021 when the Claimant was involved in a car accident on her way into work and was ultimately asked to attend work on a Wednesday instead and seems to have been able to make arrangements to do so [1061]. Shortly after that, the Company was making arrangements for members of staff to attend on three out of five Wednesdays over a five-week period in order to stress test the building as part of return to normal working arrangements following the pandemic [PS9]. The Claimant made it clear that she could not attend the office on a Wednesday as this was the day of the week at her eldest child did not attend nursery. However, it is clear from the e-mail exchange at this point in time that Paul Starkey and Glenn Sheldrake were not aware that this was the position and the Claimant was asked discuss position with HR. There was another occasion in July 2021 when the Claimant was placed on the rota to attend on Wednesday, 25 August 2021. When the rota was queried by the Claimant, Paul Starkey promptly made clear that this had been an error. The issue of being asked to come in on a Wednesday was raised by the Claimant in the appraisal meeting in August 2021. Paul Starkey's position was that if the Claimant was required to come into work on a Wednesday, then she would have to try and make arrangements to do so [1061]. However, following the appraisal meeting he e-mailed the Claimant seeking to confirm the Claimant's circumstances on a Wednesday which suggested a willingness to take those circumstances into account. On 20 August 2021, Paul Starkey e-mailed the Claimant saying that, considering that Monday 30 August was a bank holiday "*would you be able to come into the office on any other day that week?*". The Claimant forwarded the e-mail to Tom Delves stating that this amounted to "*coercive control*" [1089]. This resulted in Tom Delves advising to the effect that the fact that the Claimant's normal working day fell on a bank holiday was not, of itself, a sufficient business reason for asking her to attend work on a different day, and that he would advise Paul Starkey and Glenn Sheldrake of this. However, properly analysed, the letter setting out the flexible working arrangements had required the Claimant to attend the office one day per week and made it clear that the provisional arrangement for this to be on a Monday was subject to change. There was no reference to there needing to be a sufficient business reason for such an arrangement to change. By definition, if the Claimant did not attend work on a Monday, the requirement in this letter [138] for her to attend the office one day per week unfulfilled.

696. Ultimately, regardless of the contractual interpretation of the letter setting out the flexible working arrangements, the Tribunal was not satisfied that the various requests made of the Claimant to attend work on a different day amounted to a breach of contract or contributed to a breach of the implied term of trust and confidence. The flexible working arrangements envisaged the Claimant attending the office on a Monday. This reflected the view of the Company that there was a business need for her to attend the office once a week. It was reasonable enough for the Company to suggest a request that she attend the office on a different day where attending on a Monday was not possible. It was made clear to the Claimant

(by the Company, through Tom Delves) that she could decline such a request where there was not a significant business reason for it.

697. The Tribunal was not satisfied that Paul Starkey used the words "*because I say so and I pay your mortgage*" in this context. In the appraisal meeting, the Claimant only made reference rather more generally to Paul Starkey being prone to using words to this effect with members of staff, not just herself. In his evidence to the Tribunal, Paul Starkey denied doing so. In any event, these were not the actual words alleged by the Claimant to have been used in the grievance where the words alleged were "(b)*ecause Ian Gratte wants and he pays your mortgage*" [187]. In the grievance investigation interview, Paul Starkey stated that there was a situation that he could remember where he had said words to the effect that Ian Gratte "*pays for my mortgage so I have to come in*" but not to the Claimant. In any event, the Tribunal was satisfied that any such comment was simply making the point, in a non-legal way, that a contract of employment places obligations upon employees which employees are paid to fulfil.

(g) "*The First Respondent's lack of understanding and unreasonable approach to the Claimant's need to express milk on days in the office. To include failing to provide initially an appropriate place for this to occur; and for failing to permit the Claimant to leave a meeting on a Monday in March 2022 when she was uncomfortable as a result of leaking milk*".

698. This involves two separate complaints. The first complaint relates to the arrangements for expressing milk. This complaint was also pursued as a complaint of harassment related to sex (the complaint was listed as (a) in the second list of complaints of harassment related to sex in the List of Issues [100]) and the Tribunal's conclusions as to the factual basis for this complaint have already been set out in dealing with that complaint of harassment.

699. Those conclusions were to the effect that, whilst the arrangements initially put in place for the Claimant to be able to express milk in the office may not have been entirely ideal, the Tribunal was satisfied that the Company did adopt an understanding and reasonable approach in seeking to improve those arrangements and addressed the Claimant's concerns. The Tribunal was not satisfied that the circumstances involved in this complaint gave rise to a breach of any actual or implied term of the contract of employment.

700. The second complaint related to an incident when the Claimant was leaking milk in a meeting.

701. The Claimant has also raised a complaint of harassment related to sex arising out of this this incident (the complaint was listed as (a) in the first list of complaints of harassment related to sex in the List of Issues [99]). In dealing with that complaint, the Tribunal has set out its conclusions as to the relevant circumstances in relation to this incident. Neither Paul Starkey nor Bhupinder Padda were aware of there being any reason for the Claimant to need to leave the meeting. As such, the Tribunal was satisfied any conversation around the Claimant needing to stave the remainder of the meeting be said to have given rise to any breach of any actual or implied term of the contract of employment.

(h) "*The First Respondent's negative attitude to the Claimant working from home and making it known to the Claimant that this would impede her prospects of ever getting a promotion again*".

702. This complaint seems to relate to comments made by Paul Starkey and Remi Suzan. In the appraisal meeting of 2 August 2021, the Claimant referred to earlier comments made by Paul Starkey about home working. She asked if he could remember saying that if she applied to work permanently from home "*you might not even get a promotion*" [1072]. Paul Starkey did not seem to deny the comments, but made it clear that being promoted "*depends* (on) *what you can apply to the job*".

703. Remi Suzan discussed the effect of the Claimant working from home during the flexible working appeal meeting on 30 March 2022. His point was that working from home was holding the Claimant back in that he suggested that she was not getting the experience that she needed to be getting by being on site and also suggested that it had resulted in her being given easier work simply to keep her busy [268]. He also made the point in the meeting and in his oral evidence that working largely from home for most of the previous three years had resulted in the Claimant being isolated from the business and had contributed to a breakdown in a relationship with her managers. The Tribunal was satisfied that this was his opinion in relation to home working and his perception of the situation. To some extent, it clearly reflected the position of the Company in that Remi Suzan described the Company having developed a policy which sought to achieve a balance between working from home and attending the office. The balance struck was the Home Working Policy of the Company which allowed employees ordinarily to work up to two days per week at home depending on workload and management approval. It was clear though that the Company recognised that there were some benefits to home working so that, by 2022, a number of employees were splitting their working time between work home and attending the workplace. Thus, as part of the grievance investigation, both Warren Mullem and Bhupinder Padda confirmed that they attended the workplace three days a week and worked from home the remainder of the week. However, the Tribunal concluded that Remi Suzan was entitled to consider that there were some drawbacks to the Claimant working from home to the extent that she was seeking to do.

704. The Claimant sought to make the point that the male comparators, namely Warren Mullem and Paul Starkey, had been promoted in July 2021 after a year working from home. The Tribunal was not satisfied that this was a relevant comparison. The year in question was effectively the first year of the pandemic when the Company had had to revert to home working for all of its employees on a temporary basis. By contrast, the discussion of the Claimant's promotion prospects related to the possible situation of the Claimant working permanently from home.

705. The Claimant may have found the comments described to be negative, but looking at the context of both conversations from the transcript of the meetings concerned, it is clear that the conversations, which were partly being driven by the Claimant, developed into a frank discussion as to the position in respect of her

working from home with Paul Starkey and Remi Suzan providing their opinion as to the adverse effect that it might have.

706. As such, the Tribunal was not satisfied that this part of the Claimant's complaint brought about any breach of any actual or implied term of the contract of employment.

(i) "*The First Respondent's constant monitoring of the Claimant's work/time when she was working remotely*".

707. The Claimant has also raised a complaint of harassment related to sex arising out of this this issue (the complaint was listed as (b) in the second list of complaints of harassment related to sex in the List of Issues). In dealing with that complaint, the Tribunal has set out its conclusions as to the relevant circumstances in relation to this issue.

708. In conclusion, the Tribunal did not accept that the Claimant was subjected to constant or excessive monitoring. Her managers were entitled to manage the Claimant and this inevitably involved a degree of scrutiny which the Claimant found unwelcome. Clearly, the Claimant's perception that she was being excessively monitored contributed to a deterioration in her working relationship with her managers in that she became resentful of their attempts to manage her. However, the Tribunal was not satisfied that there was any breach of any actual or implied term of the contract of employment.

(j) "*The First Respondent's failure to deal with the Claimant's flexible working request reasonably, fairly and in line with other colleagues*"

709. Under ERA 1996 section 80G(1) an employer is required to deal with a flexible working application in a reasonable manner and a failure to do so gives rise to a cause of action which the employee can pursued by way of a complaint to the Employment Tribunal under ERA 1996 section 80H. The Claimant has made such a complaint and the complaint of an alleged failure of the Company to deal with the Claimant's flexible working request reasonably, fairly and in line with other colleagues, which has been considered above, and held to be not well founded. On the basis of those conclusions arrived at in dealing with the flexible working complaints under ERA 1996 section 80H, the Tribunal was similarly satisfied that there was no failure to deal with the flexible working request reasonably, fairly and in line with other colleagues, and as such this complaint did not give rise to any breach of any actual or implied term of the contract of employment.

(k) "*as well as complaining about* ".

710. The Claimant's grievance [185] was stated to be a complaint against the two directors in her department, Paul Starkey and Glenn Sheldrake, as well as complaining about her alleged treatment by Bhupinder Padda and her alleged demotion. It set out a long list of issues that "*I've encountered for the past year at work*". At the end of the grievance letter the Claimant stated that "*I would like the outcome of this procedure to be given the position of Senior Coordinating Engineer, as I really deserve that promotion and to be allowed to work in a harassment and*

bullying free environment with my current work arrangements made permanent" [192].

711. The grievance was investigated by Angela Foster. As a result of holding a grievance meeting with the Claimant, she identified the Claimant's complaints has essentially been complaints of harassment and bullying by her line managers (including constant monitoring from Bhupinder Padda) and demotion from her role as a Coordinating Engineer. The grievance was not upheld. On the basis of the Tribunal's findings of fact, and the Tribunal's conclusions in respect of the various complaints made by the Claimant, this was a legitimate decision for Angela Foster to make. Having arrived at this decision and having set out her reasons for this decision in the grievance outcome letter, it was not necessary for the grievance outcome letter to address every point which the Claimant had made in her detailed grievance letter in support of her complaints of harassment, bullying and demotion.

712. Looking at the outcomes requested, in terms of wanting to be given the position of Senior Coordinating Engineer, the Claimant with effectively seeking to vary her contact through being promoted. The Company was under no contractual obligation to promote her. On the basis of the evidence set out in the Tribunal's findings of fact, which the Tribunal has accepted, a legitimate view was held by or on behalf of the Company that the Claimant was not ready for such a promotion. As articulated in the flexible working appeal meeting, the evidence of Remi Suzan, which the Tribunal accepted, the Claimant did not yet have the experience and knowledge to undertake fully the engineering side of her existing position as a Coordinating Engineer [262-263]. In terms of seeking the outcome of having her current work arrangements made permanent, the Claimant was again seeking an outcome which involved her existing contract of employment being changed by the Company. Again, she had no entitlement to have her contract varied in this way. A request to have her existing flexible working arrangements made permanent was dealt with under the flexible working procedure of the Company and resulted in a decision, which the Company was entitled to make, to refuse the request.

713. In terms of the outcome of being allowed to work in an environment which was free of harassment and bullying, in dealing with various of the Claimant's complaints, the Tribunal has already concluded that it does not accept the premise involved in this requested outcome, namely that the Claimant was being subjected to harassment and bullying. The problem was not one of harassment and bullying, but that her working relationship with her managers had significantly deteriorated. Ultimately, the potential solution to the issue with regard to the Claimant's working relationships was identified at the end of both the grievance process and the grievance appeal process as being that of mediation. Contrary to the premise involved in a constructive dismissal, namely that the employer has conducted itself in a manner calculated (or) likely to destroy or seriously damage the relationship of confidence and trust between employer and employee, the proposal of mediation was indicative of the employer seeking to repair and maintain such a relationship. Ultimately, the Claimant chose to reject this proposal and resign. Although neither the grievance nor the grievance appeal were upheld, recommendations made by both Angela Foster and Carl Tudor respectively involved seeking to make recommendations and identify potential solutions so as

to make the Claimant's continued employment viable. These were not the actions of an employer repudiating the contract of an employee.

714. In the circumstances, the Tribunal was not satisfied that this part of the Claimant's complaint brought about or contributed to any breach of any actual or implied term of the contract of employment, or any repudiation of that contract by the employer.

(l) "*The First, Second and Third Respondents' pattern of discriminatory behaviour towards the Claimant based on her age, sex, maternity leave and disability*".

715. In the course of setting out the reasons for the Judgment which the Tribunal has reached, the Tribunal has dealt with the various complaints of discrimination made by the Claimant within these proceedings, as set out in the List of Issues, including those which the Tribunal has concluded do not legitimately form a part of the Claimant's pleaded case. This has included complaints brought by the Claimant on the basis that the treatment being complained of was related to her sex and age. It has also included the complaints made by the Claimant regarding treatment in relation to her maternity leave. The complaints which have been dealt with by the Tribunal also include complaints where the Claimant has referenced her medical position or position in respect of her mental health.

716. However, it is to be noted that the complaints identified as being brought by the Claimant within the Tribunal proceedings, as set out in the Case Management order of 24 August 2022 [57], did not include any complaints of disability discrimination. Nor was the Claimant given permission to add any complaints of disability discrimination.

717. The Case Management Order of 24 August 2022 did direct that the Claimant should set out the acts or omissions relied upon by the Claimant as breaches of contract which caused her to resign [59]. It is significant that the reasons set out in her resignation letter [570] did not refer to disability discrimination although it was specifically stated that she was relying upon a fundamental breach of contract on the basis that "*I've been discriminated against because of my age and sex*". In so far as she referred to the alleged impact of any treatment on her mental health, the allegation made was one of the Company not complying with its duty of care towards her.

718. It is to be noted that the Claimant, in completing section 12 of the ET1 Form of Claim, the Claimant ticked the applicable box to state that she did not have a disability [10]. Similarly, in the flexible working meeting on 2 February 2022, when clarification was specifically sought as to whether or not the Claimant was requesting an adjustment because of a disability, the Claimant replied in the negative stating "I don't have any disabilities whatsoever" [173]. Notwithstanding this, in making the occupational health referral in March 2022, Tom Delves seems to have ticked the applicable box for asking whether the Claimant's condition came under disability legislation as set out in the Equality Act 2010 [216] with the resultant report providing the medical opinion that "*it is likely that her episode of depression and anxiety would be classed as a disability within the meaning of the Act*", whilst recognising that this was ultimately a legal issue rather than a medical one [218]. However, the advice of the report was that the Claimant had "*recovered*

to the degree whereby she is fit to return to work and undertake all of her duties without restriction" [219].

719. The Claimant has complained separately of a failure to act upon the occupational health report, with this being one of her complaints of direct sex discrimination (listed as (n) in the list of complaints of direct sex discrimination) and the Tribunal has dealt separately with that complaint and, in doing so, the Tribunal is not accepted the premise that there was a failure to take the Claimant's mental health into consideration. The Claimant has also separately cited the alleged failure of the Company to implement any adjustments recommended in the occupational health report as an omission giving rise to a breach of the implied term of trust and confidence for the purposes of her constructive dismissal case (listed as (o) in the list of such acts or omissions relied upon as breaches of contract) and the Tribunal has dealt with that alleged breach below.

720. In conclusion, on the basis of the findings of fact and conclusions reached, the Tribunal was not satisfied that there was a pattern of discriminatory behaviour on the part of the Respondents towards the Claimant which brought about or contributed to any breach of any actual or implied term of the contract of employment, or any repudiation of that contract by the Company.

(m) "*The First and Third Respondents' constant slander towards the Claimant, as shown in comments such as*" (see below).

721. The Tribunal turns to consider the specific alleged comments relied upon by the Claimant.

(i) "*Remi Suzan stating that "you wouldn't have a clue of what you are looking at""*.

722. This alleged comment by Remi Suzan also formed the basis of one of the Claimant's flexible working complaints under ERA 1996 section 80H in that she alleged that the Company failed to comply with the statutory requirement to deal with the flexible working application in a reasonable manner by reason of these alleged comments on the part of Remi Suzan demonstrating an alleged lack of impartiality. As stated above, in dealing with the flexible working complaint, this exchange was not specifically referred to in the Claimant's Statement of Evidence and / or the quotation would not appear to be accurate. Rather, it appeared that this amounted to the Claimant's interpretation of comments made by Remi Suzan regarding some areas where the Claimant's engineering experience was lacking. The Claimant's closing submissions [paragraph 9.13.1] referred instead to Remi Suzan having stated "*you wouldn't actually know what you're looking at*" [279] (which equates more closely to the comments quoted in the Particulars of Claim which were those of "(y)*ou have never been asked to attend a site factory because you wouldn't know what you are looking at*" [24]). The point being made by Remi Suzan was that the Claimant's exposure to the workplace was limited to one day a week, and he was concerned that this would prevent the Claimant from getting the exposure to the experience that she needed. In dealing with the Claimant's flexible working complaint, the Tribunal has already set out its conclusions in relation to the issue as to these comments by Remi Suzan (in terms of both the words alleged by the Claimant which appear to be her interpretation, and also in terms of the words actually used by Remi Suzan, and the applicable context).

Those conclusions were to the effect that the words used by Remi Suzan simply amounted to a practical example of an area where, in his opinion, the Claimant's engineering experience was lacking. The Tribunal was not satisfied that this amounted to slandering the Claimant. The Tribunal accepted the evidence of Remi Suzan as to the basis for his opinion and assessment that the Claimant was lacking in engineering experience in this way.

(ii) "*Glenn Sheldrake stating that "all she does is shout and the whole situation really affects me"*".

723. This alleged comment and the other four alleged comments (see below) relied upon by the Claimant as being indicative of the Company (through Glenn Sheldrake and Paul Starkey) constantly slandering her, are, in fact, answers given by Glenn Sheldrake or Paul Starkey when interviewed in relation to the Claimant's grievance (or appeal) in which, broadly speaking, she was making allegations of bullying and harassment against them. Thus, the answer given by Glenn Sheldrake stating that "*all she does is shout and the whole situation really affects me*" is to be found in the note of his interview on 23 March 2023 with Angela Foster [223]. He was being asked if he thought that the relationship could be repaired which resulted in an exchange which is set out in the Tribunal's findings of fact. Later on in the same exchange, he also described the situation affecting Paul Starkey in that "*it affects Paul even more, he can't enjoy his weekends any more*". Essentially, he was describing a state of affairs which was evident from the transcript of the recording which the Claimant made of her meeting with him on 31 January 2022, in which the Claimant appeared to be very confrontational and appeared to have developed a mindset that she was dissatisfied with everything that the Company did, in particular, her managers. In the same interview, he provided a number of other examples of occasions or incidents where the Claimant was effectively shouting at him. The point he was really making was that there was "*no communication, she doesn't speak to me*", so that recently "*conversations had turned into Marta shouting at me*". When asked as to his reaction, he suggested that "*I tell her to calm down, I tell her we need to discuss things in a normal way*" [220]. At this point, he also referred to an incident where the Claimant had made demands of him across the office.

724. The point which the Claimant was making as part of her case was to ask as to where the evidence was which corroborated this impression of her shouting at her managers. In her closing submissions she made the point that "*the witnesses have not been able to provide any other witness other than Mr Paul Starkey, Mr Glenn Sheldrake and Mr Bhupinder Padda, the three persons I raised my grievance against*" [paragraph 9.13.2], but that rather served to emphasise the different perspectives on the two sides in relation to the cause of the dysfunctional relationship which had developed between the Claimant and her managers.

725. It is be noted that, as set out in the Tribunal's findings of fact, the original note of the grievance investigation interview with Warren Mullem recorded him saying that "*may be because she is kind of a hot-headed person and they don't really know how to deal with that, it can turn into a big thing and arguments*" [1226]. The subsequent comments of Warren Mullem did not say that he had not said this, but that he could not record word for word. The Claimant sought to refer the

Tribunal to the answers given by Warren Mullem on 2 May 2022 after the Claimant had sent him a list of questions, one of which was specifically asking as to whether he had heard the Claimant shouting at other people in the office. Whilst Warren Mullem stated that he had not been a witness to shouting, there had been "*raised voices here and there*" [892]. Questions 27 to 29 seem to be referring to the meeting which had taken place between the Claimant and Glenn Sheldrake on 31 January 2022 in respect of which he confirmed that "*I heard raised voices not shouting*" [892]. Essentially, the transcript of that meeting records an argument in which the Claimant was being verbally confrontational, as summarised in the Tribunal's findings of fact, an example being that Glenn Sheldrake would provide an answer, albeit an answer with which the Claimant disagreed, and the Claimant would continue insisting that she wanted an answer and had not been provided with an answer as well as being patronising to him ("*I am asking a simple question*" [763]). She had begun by saying that she had wanted the meeting to be a formal meeting with minutes taken (notwithstanding the fact that she was covertly recording the meeting) and the meeting ended with Glenn Sheldrake saying "*we had a conversation, we can't agree without HR being there as a witness*" [764]. It is his perception as to this state of affairs that Glenn Sheldrake was seeking to explain in the grievance investigation in that the point been reached that he could not, as a manager, have a proper conversation with the Claimant without it becoming confrontational. The Claimant has chosen to focus on the issue of whether the words "*all she does is shout*" are literally correct, but the Tribunal was satisfied that Glenn Sheldrake was credibly describing a situation in which it was his perception that the Claimant had become unduly confrontational.

(iii) "*Paul Starkey stating that "her email and phone communication to myself and Glenn can be quite aggressive, blunt and possibly rude"*".

726. This was an answer given by Paul Starkey to Carl Tudor when interviewed as part of the grievance appeal investigation [442]. In his Statement of Evidence, he gave a number of examples of e-mails which he clearly perceived to be confrontational such as the Claimant's email sent on 13 May 2021 ("*you keep hanging up on me*" when this was not the case, see PS10), her e-mail sent on 18 March 2022 (setting out what "*I do not appreciate*" or would "*appreciate*" and which was accusing Paul Starkey of unreasonable treatment, see PS11). Other examples are given in the Tribunal's findings of fact such as the Claimant's e-mail of 10 June 2021 accusing Paul Starkey of using her husband to check up on her [145] and the Claimant's e-mail of 17 June 2021 making it clear that she would comply, but under protest (with her protestations set out in the e-mail) with a request from Glenn Sheldrake to attend the office ("*I find myself in a really unnecessary situation yet again*" and "*I really don't understand what Glenn is trying to prove*" [148]). The e-mail to Paul Starkey and Glenn Sheldrake on 25 January 2022 stated that "*I'm not willing to keep sending emails trying to get some clarification and get back this sort of overbearing answers*" [759]. The Claimant's e-mail on 14 February 2022 to Bhupinder Padda, who was her team leader, sarcastically suggested that it "*would be really helpful if you stop bombarding me with emails and let me do some work*" [1106] is also consistent with the point which Paul Starkey was making. Similarly consistent was the completion of section 9 of the updated appraisal form with a series of complaints dressed up as questions which seemed to be designed to turn the appraisal into a confrontation [705]. Again, the Tribunal was satisfied that Paul

Starkey was trying to use practical examples to illustrate the fact that his working relationship with the Claimant had become very difficult. This would seem to have been the case from not long after she returned from her last period of maternity leave, as can be seen (on the Claimant's case) from the email to Tom Delves of 13 July 2021 [1047] when she describes Paul Starkey having admitted avoiding her as "*he thought I needed time to calm down*".

(iv) "*Paul Starkey stating that "she tends to be more aggressive if things aren't going her way or she disagrees"*".

727. This was part of the same answer given by Paul Starkey to Carl Tudor when interviewed as part of the grievance appeal investigation [442]. Again, the Tribunal was satisfied that the gist of what Paul Starkey was saying was that he found that the Claimant could become rather confrontational, which reflected his perception of the situation, and had some basis in reality. The meeting with Glenn Sheldrake on 31 January 2022 was an example of this, as was, to some extent, the appraisal meeting on 2 August 2021, relevant passages of which have been summarised in the Tribunal's findings of fact.

(v) "*Paul Starkey stating that "there is an element of twisting words and interpretations to suit herself"*".

728. Again, this was part of the same answer given by Paul Starkey to Carl Tudor when interviewed as part of the grievance appeal investigation [442]. In the interview, Paul Starkey gave the example of the Claimant suggesting, as part of her grievance, that she had been asked questions which were unduly intrusive about breastfeeding. That issue has given rise to a separate complaint as part of the Tribunal proceedings in relation to which the Tribunal has already set out its conclusions to the effect that the extent of any discussion was not unreasonable or unduly intrusive. The comments being made by Paul Starkey reflected the extent to which the relationship between the Claimant and her managers had broken down, as well as the different perceptions which both sides had about the situation. The Claimant herself was prone to seeking to characterise the position being adopted by Paul Starkey and Glenn Sheldrake as untruthful. Ultimately, the Tribunal was satisfied that these comments made by Paul Starkey reflected his perception that situations which had occurred were having a significance attached to them or an interpretation placed upon them by the Claimant which was designed to suit her narrative of having been bullied or harassed by Paul Starkey or Glenn Sheldrake. The Tribunal was satisfied that this was consistent with certain aspects of the Claimant's Tribunal case where events were retrospectively seen through the prism of the Claimant's complaints.

(vi) "*Glenn Sheldrake stating that "she keeps coming to my office shouting about her job description"*".

729. This is another quotation from the transcript of the grievance investigation interview of Glenn Sheldrake conducted by Angela Foster on 23 March 2022. On a number of occasions during this interview Glenn Sheldrake used the description of the Claimant "*shouting*" at him to describe the state of his working relationship with the Claimant, and the nature of the communication which was taking place

with her. Another example has already been dealt with above, namely the Claimant's complaint (at (m)(ii)) regarding Glenn Sheldrake stating that "*all she does is shout and the whole situation really affects me*", and it follows that the Tribunal's conclusions are the same in relation to this further complaint. In particular, Glenn Sheldrake was describing a state of affairs demonstrated by the transcript of the recording which the Claimant made of her meeting with him on 31 January 2022 [763-764] in which the Claimant appeared to approach conversations and encounters with her managers in a way which they perceived as confrontational so that "*conversations had turned into Marta shouting at me*". As previously stated, the Claimant has chosen to focus on the issue of whether the references to "*shouting*" and its frequency are literally correct, but the Tribunal was satisfied that Glenn Sheldrake was seeking to describe, in good faith, the state of his working relationship with the Claimant which had become tainted by his understandable perception that the Claimant was verbally confrontational towards him.

(m) Conclusion (as to complaint of "*constant slander towards the Claimant*")

730. It is to be noted that slander obviously has a legal meaning, which derives from common law and statute, in that it is a form of defamation giving rise to a civil cause of action. Broadly speaking, it involves damaging a person's reputation by making an untrue statement about that person. However, such a cause of action is outside the jurisdiction of the Employment Tribunal. Moreover, the complaint being brought by the Claimant, in the present context, is that of her employer, without reasonable and proper cause, having conducted itself in a matter calculated (or) likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. For these purposes, the Claimant seeks to rely upon her employer having conducted itself in such a way through comments amounting to slander. The ordinary English meaning of slander can be seen from the concise Oxford dictionary which gives the meaning of slander as a false report maliciously uttered to a person's injury. However, ultimately the issue is not so much whether the alleged conduct being relied upon by the Claimant amounted to slander, but whether, on the basis of the Tribunal's findings of fact as to that conduct, it amounted to conduct which, on its own, or with other conduct, amounted to the employer conducting itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.

731. It is to be noted that, with one exception (the comments attributed to Remi Suzan from 30 March 2023) the various comments referred to below were not comments made or said to the Claimant at the time but were subsequently extracted from the records of interviews with Paul Starkey and Glenn Sheldrake which were conducted either as part of the grievance investigation or the grievance appeal investigation. The Tribunal considered that this involved an element of case building on the part of the Claimant, by going through records of interviews by Glenn Sheldrake or Paul Starkey where they were setting out their perception of the situation and finding things with which she disagreed or took umbrage.

732. The Tribunal was not satisfied that this amounted to conduct on the part of the employer which amounted to the employer conducting itself in a manner

calculated or likely to destroy or seriously damage the relationship of trust and confidence. Rather, the comments reflect the opinions of the Claimant's managers, given in good faith, as to the state of their working relationship with the Claimant, and clearly reflect the fact that that working relationship was not going well, with the comments involving a degree of analysis on the part of the Claimant's managers as to the reasons for that. Part of the relevant context is that these were answers given in the course of an investigation or appeal into allegations of harassment and bullying which reflected the Claimant's perception of the situation, with the answers then reflecting the perception of Paul Starkey and Glenn Sheldrake. Clearly, it was not altogether surprising that the answers reflected different perceptions from those of the Claimant. The Tribunal is satisfied that, at the stage of giving these answers, Paul Starkey and Glenn Sheldrake were seeking to assist the investigation to the Claimant's grievance and, in arranging these investigation interviews to take place, the Company, as the Claimant's employer, was taking proper steps to deal with the Claimant's grievance. As such, this was not conduct which involved or contributed to a repudiation of the contract of employment.

733. As far as the comments attributed to Remi Suzan were concerned, these were similarly comments made in good faith, in a different context of a flexible working appeal meeting, and reflected the honest opinion of Remi Suzan regarding the Claimant's experience. It was a discussion which was, in large part, prompted by the Claimant, and developed into a frank discussion and, in being frank, Remi Suzan was seeking to assist the Claimant and her employment situation, rather than the reverse. It was in her interests, and that of her employment, that Remi Suzan explained the position from his perspective, and in terms of his opinion. As such, it was not conduct which involved or contributed to a repudiation of the contract of employment.

(n) "*Despite the First Respondent being aware of the Claimant's mental health issues (see Consultant Psychiatrist Report dated 22nd March 2022) when the Claimant contacted the First Respondent, including on the 14th February 2022, for support she did not receive support only demands to complete her workload*".

734. It is correct to say that, at various points in time, the Claimant had complained to her managers about the way in which she was being treated and suggested that this was causing stress or adversely impacting her mental health. Examples include the appraisal meeting with Paul Starkey on 2 August 2021 and the meeting with Glenn Sheldrake on 31 January 2022. It was also referenced in e-mails, for example, her e-mail of 25 January 2022 stated that "*this constant unfair treatment for the past months have even led me into having mental issues*" [759]. The Tribunal has been referred to little by way of medical evidence, and the Claimant had relatively little time off work due to sickness. However, on 20 October 2021 the Claimant had been signed off work for two weeks with the reason given as anxiety disorder. The occupational health report from 17 March 2022 suggested that the Claimant's mental health reached its nadir in December 2021 and that she had recovered significantly by the date of the report of 17 March 2022 [218] but, again, there was little by way of contemporaneous evidence regarding the position in December 2021. She was not signed off work at this point in time. The next point

in time at which she was signed off work had been between 17 February 2022 and 1 March 2022 with the reason given as stress at work.

735. The Tribunal does not accept the way in which the Claimant, in making the complaints set out at (n) has sought to characterise the exchange of e-mails regarding her workload on 14 February 2022. There had been an exchange of e-mails on 14 February 2022 which began as a result of Bhupinder Padda sending a number of e-mails seeking updates on work that the Claimant was doing. The Tribunal has already set out its conclusions in relation to the issue raised by the Claimant being sent a series of e-mails in this way. She had sent the sarcastic reply to the effect that it "*would be really helpful if you stop bombarding me with emails and let me do some work*" [1106]. This was not really an appropriate reply to straightforward requests simply asking for an update as to various pieces of work. She copied the e-mail to Paul Starkey and Glenn Sheldrake stating that they were aware of the situation and would raise any issues with her if they were not happy with her performance. This resulted in Glenn Sheldrake feeling the need to become involved by replying to the effect that the Claimant "*should be completing your workload to suit Bhupinder requests as he is your senior on this project*". This amounted to no more than reminding the Claimant that she was reporting to Bhupinder Padda in relation to this work as her e-mail at shown a reluctance to report back to him.

736. As stated, the Claimant was then absent from work from 17 February 2022. Tom Delves stated in his Statement of Evidence [TD8] that "*I was formally made aware of the Claimant's mental health issues when her mental health support worker contacted the respondent on the Claimant's behalf in February 2022 to express concerns about her stress at work*". This resulted in a meeting being arranged with the support worker to discuss the issues and it being agreed that the Claimant would be reminded of the Company's Employee Assistance Programme and informed as to the members of staff who were trained mental health first aiders, in addition to an occupational health referral being made. The occupational health referral was made shortly afterwards on 4 March 2022 [213]. This resulted in the occupational health report dated 17 March 2022. The Tribunal has set out its conclusions at (o) immediately below in relation to the Company having taken appropriate steps arising out of the occupational health report.

737. In the circumstances, the Tribunal was not satisfied that this part of the Claimant's complaint brought about or contributed to any breach of any actual or implied term of the contract of employment, or any repudiation of that contract by the employer.

(o) "*The First Respondent's failure to implement the recommended adjustments as contained in the report from Occupational Health Consultant*".

738. The issue as to the extent of any steps taken by the Company to act on the occupational health report has been discussed in detail in dealing with the complaint listed as (n) in the list of complaints of direct sex discrimination. The Tribunal also set out the relevant chronology between the report being made available to the Company (shortly before the flexible working appeal meeting) and the meeting with Tom Delves taking place on 22 April 2022. Shortly before the flexible working appeal meeting

739. From those conclusions, it can be seen that there was a short delay in the report being provided to the Company, following which a meeting to discuss the report was arranged between the Claimant and Tom Delves, the Claimant e-mailed on the day of the meeting to say that she was taken the rest of the day off sick. She was subsequently signed off work for a week on 6 April 2022. The meeting was rearranged for 22 April 2022.

740. The report stated that the Claimant was "*currently fit for work but could be supported with the adjustments/qualifications outlined below for the business to consider*" [218]. In this regard, the report recognises that the work-related stressors described by the Claimant in the history which she had given to the consultant were being investigated under the grievance process. As such, the report stated that until "*the reported work related stressors have been investigated and the process concluded, I wonder whether the business could support Marta by allowing her to work from home in a full time capacity as she reports a significant increase in stress when returning to the office one day per week*". This suggestion was duly considered and then implemented. The other possible adjustment or modification raised was that assessing "*her workload and reducing this if deemed excessive is also likely to be of support*". Again, consideration was duly given to whether the Claimant's workload was excessive with the Company satisfying itself that it was not. The issue of the Claimant's workload has also been the focus of a separate complaint within these proceedings, and based on the Tribunal's conclusions in relation to that complaint, the Tribunal was satisfied that the Claimant's workload was not excessive at this point in time.

741. In the circumstances, the Tribunal was satisfied that the Company either implemented or gave appropriate consideration to any adjustments recommended in the occupational health report. It follows that the Tribunal was not satisfied that this part of the Claimant's complaint brought about or contributed to any breach of any actual or implied term of the contract of employment, or any repudiation of that contract by the employer.

(p) "*The First Respondent's act of victimisation towards the Claimant by the act of suspension on the 8th of July 2022, which was not a neutral act, but one of recrimination towards the Claimant for raising the Early Conciliation and the subsequent ET1 as stated on the First Respondent's letter dated 8th July 2022 and as the First Respondent's representative from Croner stated in the recorded investigation meeting dated 13th July 2022*".

742. The wording of this complaint is referring to the opening paragraph of the suspension letter which stated that the letter was being sent further "*to your email of 8 July to Henry O'Carroll of ACAS*"[480]. However, the same sentence then went on to state that the suspension was "*pending investigations into the breakdown of the employer/employee relationship*".

743. This part of the Claimant's complaint is also referring to an exchange in an investigatory meeting between the Claimant and Kerry Tipple (from Croner Face2Face) on 13 July 2022. In a subsequent investigatory interview with Mark Silvey (also from Croner Face2Face) the Claimant had been seeking to rely on the words used by Kerry Tipple as being to the effect that she had been suspended for

bringing proceedings in the Employment Tribunal. For the reasons set out in the Tribunal's findings of fact when discussing the exchange which had taken place and the interpretation which the Claimant was seeking to place upon what had been said by Kerry Tipple, the Tribunal rejected the interpretation being relied upon by the Claimant.

744. The Tribunal's conclusions as to the reasons for the suspension and whether it amounted to victimising the Claimant because of the Claimant having done a protected act (whether by way of her grievance or by way of notifying ACAS) have been set out in dealing with the Claimant's complaint of victimisation (complaint (b) on the list of complaints of victimisation).

745. Further, as set out in the Tribunal's findings of fact, the Tribunal accepted the evidence of Angela Foster as to the reason for suspending the Claimant namely that the Claimant had rejected a possible settlement and working relationships were still in a state of disrepair so that the Company needed to find a solution before the Claimant came back to work in circumstances where, with the grievance appeal having concluded, the Claimant was due to be coming back to work on the basis of attending the office three times per week.

746. In the circumstances, the Tribunal rejected the premise of this complaint, namely that, rather than being a neutral act, the suspension was an act of victimisation or recrimination. The suspension was for genuine reasons. The situation had become one in which the relationship between the Claimant and those managing her was such that she could not be managed. The Tribunal was not satisfied that there were viable options for placing the Claimant somewhere else whilst the investigation took place. The suspension was a neutral act. The outcome of the investigation demonstrates that any decision in respect of the Claimant's employment had not been predetermined. The Claimant remained on full pay. Clearly the suspension itself did not help the position in respect of the level of trust and confidence within the employment relationship but it enabled and facilitated an investigation into whether the employment relationship had broken down or whether it could potentially be salvaged. It was not a repudiatory breach of the implied term of trust and confidence in itself. Ultimately, the outcome of this process identified that the point had not yet been reached where the employment relationship had irretrievably broken down, but rather that the issues between the Claimant and those managing her might be capable of resolution through mediation.

(q) "*The First Respondent's failure to put on hold the investigation against the Claimant that started on 11th July 2022, until the grievance for victimisation that the Claimant raised on the 11th July 2022 including any appeal was concluded. Those acts* (involved a) *lack of impartiality and the Claimant considered them further victimisation*".

747. Given the nature of the concerns which were to be investigated, regarding the possibility that the employment relationship had irretrievably broken down, the Tribunal was satisfied that it was not appropriate for any investigation to be held in abeyance. The Claimant's grievance letter was not specifically complaining about the investigation but was complaining of victimisation although the basis for the

complaint was not clearly identified in the letter. However, the Claimant made reference in the grievance letter to having "*evidence in the form of* (a) *letter as I've been suspended from work*" [485], from which the focus of the victimisation complaint seemed to be on her suspension. The Company acted promptly in putting in place arrangements for the new grievance to be investigated by another consultant from Croner, with the Claimant being informed on 14 July 2022 that arrangements had been made for the grievance meeting to take place on 19 July 2022 [532]. There was no reason for the investigation regarding the employment situation not to be able to take place alongside any investigation of the Claimant's further grievance. The Tribunal was satisfied that undertaking such an investigation into the employment situation was a neutral act. The investigation was impartial. It concluded that the employment relationship was potentially capable of being salvaged through mediation being pursued. As such, the Tribunal was not satisfied that the actions of the company in continuing the investigation after the Claimant had submitted her further grievance amounted to a breach of the implied term of trust and confidence will contribute to any breach of implied term of trust and confidence.

(r) "*The First Respondent's failure to lift the Claimant's suspension upon receipt of the outcome of their investigation, on the 22nd July 2022. The Claim was dismissed in its entirely and mediation was proposed as a recommendation in the outcome. The Claimant remained suspended from work, this shows that the suspension of the Claimant was not a "neutral act to allow the Respondent to carry out the investigation" as per the First Respondent's allegation but instead was an act of victimisation*".

748. The Tribunal has already rejected the complaint that the suspension was an act of victimisation. However, the Claimant's further complaint relates to the suspension having continued beyond 22 July 2022. This was the date of the report prepared by the Croner consultant, Kerry Tipple, which recommended that there was no case to answer and that the matter should not proceed to a disciplinary hearing [492]. It was further recommended that no further action be taken "*in relation to the concerns raised*". This was referring to the concerns regarding possible breakdown in the employment relationship. The reason for the recommendation was that mediation had not yet been attempted, training had not yet been carried out (both of which were recommendations from the grievance process) and the Claimant had yet returned to the office on the basis of working three days a week which would establish "*where any conflicts may occur*". It was recommended that the mediation take place "*prior to MS's return to the office on her full three days*".

749. As stated in the Tribunal's findings of fact, the provision of the report was not the end of the process for the duration of which the Claimant had been suspended. The Company needed to decide whether or not to accept the recommendations. The key recommendation was mediation. However, the report recognised that mediation is a voluntary process so that neither side could be forced to attend.

750. If the suspension was lifted, then the Claimant would be due to return to work in the office three days a week in that her flexible working arrangements had

expired and the grievance process which had been live at the time of the occupational health report had also concluded with the appeal outcome being provided, so that the recommended temporary home working arrangements, which had been put in place for the duration of this process of dealing with the grievance, were also due to come to an end. The Tribunal accepted the evidence of Angela Foster, as set out in the findings of fact, that, given that the Claimant had been suggesting that her circumstances at work, and the difficulties involved in her working relationship between Glenn Sheldrake and Paul Starkey, were having a detrimental impact upon her mental health, it was considered that it would benefit the Claimant to go through the mediation process before returning to work. This was also the advice given by Croner which was not to lift the suspension before mediation was arranged and in place so that the Claimant would not be caused any further undue stress or anxiety. Thus, on 27 July 2022 Angela Foster wrote to the Claimant seeking consent to mediation [151]. The Claimant has claimed that this was the last straw which prompted her resignation. At the point in time of her resignation, she was not aware that Kerry Tipple had concluded the investigation and provided a report. Thus, any delay in acting on that report was not causative of the Claimant's resignation. In replying to that resignation letter, Angela Foster made it clear that the Company had decided to accept the recommendation of the report, take no formal disciplinary action against the Claimant and lift the suspension. Significantly, the Claimant was given the opportunity to withdraw her resignation which the Tribunal concluded was the action of an employer which was prepared to continue the contract of employment rather than seeking to repudiate it.

751. In the circumstances, the Tribunal was not satisfied that the actions of the company, as complained about in this complaint, gave rise to a breach of the implied term of trust and confidence or any repudiatory breach of the contract of employment. Further or alternatively, any such actions were not causative of the Claimant's resignation as she was not aware of them at the time of her resignation.

(s) "*The First Respondent's lack of empathy towards the Claimant. Despite the First Respondent having been aware of the Claimant's severely damaged mental health, they led the Claimant to believe that the possibility of a disciplinary hearing was still available for an entire week after they received the outcome on the 22nd July 2022 where it was stated: "there is no case to answer and this matter should not proceed to a disciplinary hearing". The First Respondent only sent the outcome to the Claimant after she resigned and only because she asked for it*".

752. This is effectively the same issue as that raised by the complaint immediately above (listed as (r)). The same reasons apply. The Tribunal was not satisfied that any delay between the Company receiving the recommendations of the investigation report of Kerry Tipple and the Company then acting on those recommendations gave rise to, or contributed to, a breach of the implied term of trust and confidence or any repudiatory breach of the contract of employment. In any event, since the Claimant was not aware of any delay pat the point of her resignation, it was not causative of her resignation. Moreover, the Tribunal does not accept the premise of the complaint, namely that the delay was indicative of a lack of empathy on the part of the Company. The Tribunal accepted the evidence of Angela Foster that the consideration given as to the steps to be taken as a result

of the recommendations made by the report took account of the Claimant's mental health, in particular the concern that the situation in the workplace was having a detrimental impact on her mental health. As such, the Tribunal was not satisfied that this complaint involved any breach of the implied term of trust and confidence. Further or alternatively, the actions of the Company through any delay in acting report of Kerry Tipple were not causative of the resignation, because the claimant was not aware of them at the time when she resigned.

(t) "*The First Respondent's failure to allow the Claimant to raise an appeal for the grievance procedure within 5 days. The First Respondent sent a letter to the Claimant on 27th July 2022 requesting her to fill up a consent form to start Mediation ASAP before the 5 days for her to raise an appeal were concluded, failing to follow the ACAS code of practice and the First Respondent's own grievance procedure. The Claimant felt this was another act of victimisation and this was the 'Final Straw' that led to the Claimant's Resignation*".

753. The Claimant had been informed on 22 July 2022 that her further grievance had not been upheld. This was a grievance complaining that her suspension amounted to victimisation. The Claimant had been informed that she had a right of appeal against the decision not upholding her a grievance and that any appeal needed to be submitted within five working days [567]. On the face of it, contrary to the assertion made in the Claimant's resignation letter, this was a recognition of the Claimant's right of appeal under the grievance procedure. The Tribunal considered that the purported last straw being relied upon by the Claimant, namely that the act of seeking her consent to mediation involved a breach of the Company's grievance procedure and / or any applicable ACAS Code of Practice in that it was in breach of her right to appeal, was misconceived. It remained open to the Claimant to pursue an appeal, whether or not she agreed to mediation. She may not have signed the consent form. Alternatively, any mediation could have proceeded alongside any appeal. Far from being indicative of a breach of the implied term of trust and confidence, the very fact that the Company was seeking to pursue mediation suggested that it was not seeking to conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee, rather than seeking to repair and continue that relationship.

Further acts or omissions alleged to give rise to a breach of the implied term of trust and confidence.

754. The Tribunal's conclusions in relation to (a) to (t) above deal with the Claimant's case as set out in the Further Particulars which she was directed to provide by Employment Judge Burns whose Case Management Order required the Claimant to list the acts or omissions relied upon as breaches of contract by the Respondent which she was saying caused her to resign. As previously noted, the Claimant appears to have added further alleged treatment to the List of Issues [93], as (u) to (z), which did not appear as part of the Claimant's case in her Further Particulars. However, for the sake of completeness, the Tribunal's conclusions in relation to the treatment alleged at (u) to (z) are as set out below.

(u) "*The Claimant raised the concerns in an informal way prior to raising the grievances and the First Respondent took no action about them*"

755. This is a very generalised complaint which does not seek to particularise the specific alleged omissions or failings of the Company in relation to which concerns were raised. The Tribunal's findings of fact detail various concerns raised by the Claimant at various points in time. Many of those concerns have effectively given rise to freestanding complaints within these proceedings, and the Tribunal has separately set out its conclusions in relation to each individual complaint including its conclusions regarding any complaint about the adequacy of any steps taken by the Company in dealing with any concerns. On the basis of the Tribunal's findings of fact and conclusions, many of those concerns were not well-founded and / or dealt with by the Company. Clearly though there was a significant level of disagreement between the Claimant and the Company, and the Claimant remained aggrieved about many of her concerns. However, on the basis of the Tribunal's findings of fact, and the Tribunal's conclusions in relation to the specific complaints made by the Claimant, the Tribunal was not satisfied that the way in which the Company dealt with concerns raised by the Claimant gave rise to, or contributed to, a breach of the implied term of trust and confidence.

(v) "*The First Respondents failed to fulfil their duty of care towards the Claimant*".

756. Again, this complaint, as added to the List of Issues, is a very generalised complaint without specifics as to the failings being alleged on the part of the Company. The resignation letter itself had similarly made reference to the Company "*not complying with their duty of care towards me*" [570] without being specific as to the alleged breaches of any duty of care.

757. The Particulars of Claim did contain a list of alleged breaches of the duty of care [30] although clearly the Particulars of Claim was submitted approximately six weeks before the Claimant's resignation. A number of the alleged breaches amounted to historic complaints. The Tribunal has sought to deal with these specific issues as set out below.

(i) "*The Claimant has never been provided with a suitable place to express her milk*"

758. This issue has been raised separately as one of the matters relied upon as giving rise to a breach of the implied term of trust and confidence (listed as (g) above and also as the basis of a complaint of harassment related to sex (listed as (a) the second list of complaints of harassment related to sex). On the basis of the findings of fact made by the Tribunal and its conclusions in relation to those separate complaints, the Tribunal was not satisfied that there was a breach of any duty of care giving rise or contributing to a breach of the implied term of trust and confidence.

(ii) "*When the Claimant has returned to work after her maternity leave, the Respondent has failed to carry a Risk Assessment*".

759. The Tribunal's findings of fact set out the steps taken by the Company in relation to undertaking risk assessments. A risk assessment was undertaken on

21 November 2018 during the Claimant's first pregnancy. The overall risk assessment was low. A review of the risk assessment was undertaken on 2 January 2019. The outcome letter dealing with the Claimant's first flexible working request had made provisions for home working on the basis that the Claimant would need to notify HR four weeks prior to her intended return to work so that a home risk and health and safety assessment could be undertaken. The Tribunal was not referred to evidence of this having happened. The Tribunal was similarly not referred to evidence of risk assessments having been arranged during or after the Claimant's second pregnancy, although the Tribunal was also not referred to evidence of the Claimant having raised concerns about this. Her Statement of Evidence simply stated that the Company did not arrange any risk assessments during or after this pregnancy [C36]. To some extent, these are historic complaints which are now being raised. The Claimant had returned to work following her second period of maternity leave in April 2021, 15 months before her resignation. The Claimant had been ordered in the Case Management Order of 24 August 2022 to set out the specific acts or omissions relied on as breaches of contract "*which she says caused her to resign*" and any concern as to the absence or failure to undertake risk assessment was not one of the matters set out in the lengthy list (from (a) to (t)) [66-69] of incidents relied upon as a breach of the implied term of trust and confidence. As such, the Tribunal was not satisfied that it was an issue which the Respondents needed to address. Further or alternatively, the Tribunal was not satisfied that any act or omission on the part of the Company in relation to risk assessments gave rise to or contributed to any breach of the implied term of trust and confidence. Additionally, the Tribunal was not satisfied that any such alleged breach was causative of the Claimant's resignation.

(iii) "*The Respondent failed to make reasonable adjustments to the Claimants work during her pregnancies*"

760. Again, this is in the nature of an historic complaint given that the last time that the Claimant had worked whilst pregnant (other than any keeping in touch days) was when she went on maternity leave for the second time on 11 January 2021 [C37]. The complaint made in the Particulars of Claim does not specifically identify the adjustments which it is being alleged it would have been reasonable to make, or the basis upon which any such adjustments might have been reasonable. As such, the Tribunal was not satisfied that this was an issue which could sensibly be responded to by the Respondents or adjudicated upon by the Tribunal. However, in as far as the Claimant has referred to issues in respect of her work or working arrangements during her pregnancies in either the Particulars of Claim, Further Particulars, or in her Statement of Evidence, the Tribunal has sought to deal with these issues in its findings of fact and as set out in its conclusions where these issues have been the subject of separate complaints within these proceedings. On the basis of those findings of fact and those conclusions, the Tribunal was not satisfied that any act or omission on the part of the Respondents during the Claimant's pregnancies gave rise to, or contributed to any breach of the implied term of trust and confidence, or that any alleged breach was causative of her resignation.

(iv) "*When the Claimant raised her concerns about the treatment received* (from) *her Directors with the HR Manager, nothing was done. The Claimant repeatedly*

phoned the HR Manager crying and email(ed) *him telling him how she was feeling and nothing was done about it*".

761. This is a complaint which falls within the scope of the complaint listed as (u) above so that the Tribunal's conclusions in relation to that complaint of an alleged breach of the implied term of trust and confidence similarly apply. Furthermore, or alternatively, the Tribunal did not accept the premise of the complaint. The Tribunal's findings of fact contained frequent reference to the involvement of Tom Delves, invariably as a result of the Claimant raising issues with him, frequently regarding the extent to which she was aggrieved with the way in which she was being managed by Paul Starkey and Glenn Sheldrake. It is clear from the content of a number of the e-mails that she was effectively seeking to get him to take sides in any developing dispute, and was relatively successful in getting him involved. It is also the case that he had made it clear to her that if there were matters about which she was aggrieved or which were not resolved to her satisfaction, then it was open to her to pursue a formal grievance. In the circumstances, the Tribunal was not satisfied that any acts or omissions on the part of Tom Delves in relation to the issues raised by the Claimant gave rise to a breach of the implied term of trust and confidence. Indeed, the impression of the Tribunal was rather the reverse, namely that Tom Delves appeared to be the individual within the Company in whom the Claimant placed a degree of trust on the basis of his willingness to try and deal with issues on her behalf. It further follows, that the Tribunal was not satisfied that any such complaint was causative of the Claimant's resignation.

(v) "*The Claimant has not been provided with the necessary breaks to breastfeed her second baby*".

762. The Tribunal did not accept the premise of this complaint. The complaint appeared to stem from the Claimant being aggrieved, after her return from her second period of maternity leave, with not having the same arrangements as to core hours as had applied during her return from her first period of maternity leave. This is dealt with in the Tribunal's findings of fact. The Claimant raised this as an issue during the appraisal meeting on 2 August 2022 suggesting that it was making breastfeeding really difficult. However, Paul Starkey made it clear that there was no problem at all with the Claimant breastfeeding during working hours and that this had previously been made clear to her [1068]. In any event, the Tribunal was not satisfied that this was an issue which gave rise to, or contributed to, a breach of the implied term of trust and confidence, or was causative of the Claimant's resignation.

(vi) "The Respondent has failed to make any reasonable adjustments after receiving an Occupation Health Report with recommendations on how to help out the Claimant with her mental health".

763. This is effectively the same issue as that raised above as (o) in the list of matters relied upon as giving rise to a breach of the implied term of trust and confidence. In the e circumstances, the Tribunal relies upon the reasons already given at (o) above. The Tribunal was satisfied that this was not a matter which gave rise to, or contributed to, a breach of the implied term of trust and confidence, or was causative of the Claimant's resignation.

(w) "*The First Respondent refused to look into some of the allegations raised in the grievance*"

764. This is effectively the same issue as that raised above as (k) in the list of matters relied upon as giving rise to a breach of the implied term of trust and confidence. In the circumstances, the Tribunal relies upon the reasons already given at (k) above. The Tribunal was satisfied that this was not a matter which gave rise to, or contributed to, a breach of the implied term of trust and confidence, or was causative of the resignation.

(x) "*The First Respondent failed to do reasonable adjustments*"

765. Again, the Claimant has complained about an alleged failure to make adjustments as (o) and (v)(iii) in the list of matters relied upon as giving rise to a breach of the implied term of trust and confidence, save that this complaint is less specific and so potentially wider. The only issues raised regarding adjustments in the Particulars of Claim are those covered by (o) and (v), and the only issue as to adjustments in the Claimant's Statement of Evidence was that in respect of the adjustments which the Claimant says should have been made as a result of the occupational health report of 17 March 2022 [C69]. In the circumstances, in the absence of this complaint being particularised in any way, the Tribunal was not satisfied that it took the Claimant's case any further than the complaints already referenced above. Further or alternatively, on the basis of the findings of fact and the conclusions of the Tribunal, the Tribunal was not satisfied that this matter gave rise to, or contributed to, a breach of the implied term of trust and confidence, or was causative of the resignation.

(y) "*The First Respondents failed to follow the ACAS procedure for the grievance*"

766. The Case Management Order of 24 August 2022 had ordered the Claimant to set out any alleged breaches of the ACAS Code of Practice on Grievance Procedures [59] which were being relied upon by the Claimant (albeit this was in the context of the Claimant claiming that any non-compliance should give rise to an uplift in any award). Paragraph 16 of the Claimant's resultant Further Particulars set out various criticisms of the grievance procedure and outcome (listed as (a) to (j)) [72-73] although the criticisms mostly failed to identify respects in which it was being alleged that the Code of Practice has been breached.

767. It should be noted that the Code of Practice describes itself as providing and sets out principles for handling disciplinary and grievance situations in the workplace. The Code of Practice makes it clear that a failure to follow the Code does not, in itself, make an employer liable to proceedings. However, the Code of Practice will be taken into account by an Employment Tribunal in considering relevant cases and compensation awards can be adjusted where there has been an unreasonable failure to comply with any provision of the Code.

768. To avoid conclusion in dealing with the Claimant's various criticisms, to avoid conclusion, the Tribunal has renumbered the criticisms listed at paragraph 16(a) to (j) of the Further Particulars as (i) to (x), as dealt with below.

(i) *The Claimant complained at paragraph 16(a) of the Further Particulars [72] of an unreasonable delay in arranging the grievance meeting*.

769. The grievance was dated 1 March 2022 [184-192] It was a lengthy document making wide-ranging complaints going back over the past year [184] (notwithstanding the requirement of the Code of Practice to raise grievances without unreasonable delay). The meeting was arranged for and took place on 14 March 2022. In the circumstances, the Tribunal did not consider that this was in breach of the guidance to the effect that a formal meeting should be held without unreasonable delay.

(ii) *The Claimant complained at paragraph 16(b) of the Further Particulars [72] that there was a failure to deal with the grievance impartially and to arrive at a decision on reasonable grounds by applying the balance of probability*.

770. Effectively this is a complaint about the outcome of the grievance which has been dealt in dealing with the complaint listed at (k) above.

771. In so far as the Claimant was complaining [72] about Angela Foster not having upheld her grievance in relation to Paul Starkey having allegedly said "*because I say so and I pay your mortgage*", the Tribunal has dealt with the significance of this evidence in its findings of fact and in its conclusions in dealing with the complaint listed as (f) (in the list of complaints of alleged breaches of the implied term of trust and confidence) where the Tribunal concluded that it was not satisfied that Paul Starkey had used these words in the context alleged.

(iii) *The Claimant complained at paragraph 16(c) of the Further Particulars [72] about not receiving the minutes of the grievance meeting until they were provided with the outcome*.

772. . This was not in breach of the Code of Practice which simply advises that an employer should keep written records of grievance processes. In fact, the Claimant's interview had been recorded.

(iv) *The Claimant complained at paragraph 16(d) of the Further Particulars [72] that although the grievance outcome letter was dated 30 March 2022, in the evidence pack with which she was provided there were records of interviews which had taken place after this date.*

773. Although the grievance outcome letter was dated 30 March 2022, it can be seen that an investigation interview had taken place with Remi Suzan on 31 March 2022 [282] and a further interview took place with Paul Starkey on 1 April 2022 [284]. However, the Claimant was only provided with the grievance outcome letter and the evidence pack on 8 April 2020. It had originally been intended that she would be provided with the outcome at a grievance outcome meeting, but Angela Foster e-mailed the Claimant on 6 April 2022 [862] offering to provide the outcome in writing instead, to which the Claimant agreed, with the outcome letter then be e-mailed to her on 8 April 2022. In the Tribunal hearing, Angela Foster was asked to explain the apparent anomaly whereby some of the records of interviews post-date the decision letter. She confirmed that, although she drafted the letter, she had not

produced it, and it was possible that it had been incorrectly dated. The Tribunal concluded that, on the balance of probability, it seemed most likely that this was the case. In any event, this was not a breach of the Code of Practice.

(v) *The Claimant complained at paragraph 16(e) of the Further Particulars [72] that there was a failure to investigate all of the allegations made by her as part of her grievance as these were not referenced in the outcome letter*.

774. The Tribunal has dealt with this complaint in dealing with the complaint listed as (k) in the list of alleged breaches of the implied term of trust and confidence. The introduction to the Code of Practice states that employers should carry out any necessary investigations to establish the facts of the case. Angela Foster had effectively carried out the investigation which she considered to be necessary to establish whether the Claimant had been subjected to harassment and / or bullying and demotion. Paragraph 40 of the Code of Practice provides that, following the grievance meeting, the employer should communicate to the employee, in writing, what action, if any, it intends to take to resolve the grievance and the employee should be informed that he or she can appeal if not content with the action taken. This is what happened in the Claimant's case. The outcome letter did identify action to be taken. On the basis of the Tribunal's conclusions regarding the complaints made by the Claimant, it was an appropriate outcome to the grievance. In so far as the Claimant disagreed with the outcome, or the extent of any investigations, then she had a right of appeal, which she duly exercised, which resulted in the detailed investigation undertaken by Sharlene Browne and Carl Tudor.

(vi) *The Claimant complained at paragraph 16(f) of the Further Particulars [73] that she was not provided with the outcome of her grievance appeal within a reasonable period of time.*

775. The Tribunal was not satisfied that there was any breach of the Code of Practice. Paragraph 42 of the Code of Practice provides that an appeal should be heard without unreasonable delay and paragraph 45 provides that the outcome of the appeal should be communicated to the employee in writing without unreasonable delay. The appeal was dated 21 April 2022. The appeal document was 56 pages in length. On 28 April 2022, the Claimant was sent an invitation to a grievance appeal meeting to take place on 3 May 2022. Her e-mailed reply complained about the meeting having been postponed [888]. This seems to have been a reference to the Claimant having told Tom Delves during the meeting to discuss the occupational health report on 22 April 2022 that she was available for 28 and 29 April 2022 as she wanted the meeting to take place as soon as possible. However, the meeting was not arranged for those dates, so was not postponed as such. Clearly, the Company was in the process of instructing external consultants, as a third party, to undertake the grievance appeal investigation, and it would not just be the Claimant's availability that needed to be considered. Indeed, this seems to have been made clear to the Claimant, as a point to this effect was made in the reply of Tom Delves on 29 April 2022 [887]. It can be seen that Tom Delves commented privately, in an e-mail to Angela Foster, that the "*point about the Company postponing the meeting is just outrageous*". Angela Foster had commented "*I can't take her attitude and moaning over every little detail*" [886]. Certainly, on the evidence before the Tribunal, it was wrong to suggest that the

grievance meeting had been postponed since the meeting had not been arranged at that point. In any event, the delay between 22 April 2022 and 3 May 2022 was not unreasonable. The Claimant duly met with Sharlene Browne on 3 and 4 May 2022 [C85] resulting in an extremely detailed investigation interview [372-434]. Sharlene Browne had to withdraw from conducting the grievance appeal investigation due to personal circumstances. The Claimant was made aware of this. Carl Tudor took over and conducted investigation interviews with Glenn Sheldrake, Paul Starkey, Bhupinder Padda, Angela Foster and Tom Delves. He prepared a grievance appeal report dated 8 June 2022 setting out his recommendations as to the outcome of the grievance appeal. The Claimant was notified on 9 June 2022 that the Company had accepted these recommendations.

(vii) *The Claimant complained at paragraph 16(g) of the Further Particulars [73] that her grievance appeal was not dealt with impartially*.

776. The basis for this complaint was that the grievance appeal investigator, Carl Tudor, had had a telephone conversation with the Claimant on 17 May 2022, in which the Claimant's interest in the possibility of an agreed resolution was explored and in which reference was made to the possibility of the contract of employment being terminated if a resolution was reached. The same complaint was made as a complaint of victimisation (listed at (d) in the list of complaints of victimisation) on the basis that there was a lack of impartiality and that this amounted to victimisation. In dealing with that complaint, the Tribunal has set out its conclusions as to the allegation of a lack of impartiality in dealing with the grievance appeal. Those same conclusions apply to this further complaint of a lack of impartiality. As such, the Tribunal was not satisfied that the handling of the grievance appeal gave rise to a breach of the Code of Conduct.

(viii) *The Claimant complained at paragraph 16(h) of the Further Particulars [73] that her grievance of 11 July 2022 (which complained that her suspension amounted to victimisation) was not dealt with impartially*.

777. The basis for this complaint was that the same external consultants (Croner) had "*dealt with the Claimant's suspension*" and so were not in a position to deal with a complaint about the suspension, in particular when any such complaint involved considering the reasons for suspension. The Tribunal was not satisfied that this caused there to be a breach of the Code of Conduct. The Tribunal has concluded that it is likely that advice was being given by Croner regarding dealing with the concerns of the Company that there had been a breakdown in the employment relationship. It is significant that, rather than simply terminating contract on this basis, it is clear that Croner advised that the circumstances should be investigated and that the outcome of the investigation was that no contractual or disciplinary action should be taken, but that mediation should be pursued. The decision to suspend was that of Angela Foster. In complaining that the suspension amounted to victimisation, the Claimant was relying upon the wording of the suspension letter, which was a matter of record, and her interpretation of a discussion with Kerry Tipple, which was recorded in the investigatory interview conducted by Kerry Tipple as part of the investigation regarding the state of the employment relationship. The Claimant's complaint of victimisation was then investigated by a separate consultant from Croner. The report of this consultant,

Mark Silvey, was provided to the Claimant on 22 July 2022. The Tribunal was satisfied that it amounted to an impartial investigation of the Claimant's complaint. Clearly, one of the Claimant's complaints within these proceedings is that the suspension amounted to victimisation. Based on its conclusions as to the reasons for the suspension, the Tribunal has already concluded, as set out above, that the complaint that the suspension amounted to an act of victimisation was unfounded. As such, the Tribunal was not satisfied that this complaint of lack of impartiality was well-founded.

(ix) *The Claimant complained at paragraph 16(i) of the Further Particulars [73] that she was sent a letter on 27 July 2022 asking her to complete a consent form for the purposes of mediation which "did not respect the five days that the Claimant had (for) appealing" the decision dated 22 July 2022 in respect of her grievance complaint of victimisation*.

778. This is the same complaint as that dealt with at (t) above, so that the same conclusions apply, namely that the complaint Was not well-founded and that there was no breach of the Code of Conduct with regard to the Claimant's right to appeal against the grievance decision of 22 July 2022.

(x) *The Claimant complained at paragraph 16(j) of the Further Particulars [73] that there was an unreasonable delay in providing her with the outcome of her grievance dated 28 July 2022 which was provided to her on 23 August 2022*.

779. This complaint is not relevant to the Claimant's complaint of constructive dismissal as it postdates her resignation.

(z) "*The First Respondents made unreasonable changes to the Claimant working patterns without agreement*".

780. This is the final complaint of a breach of the implied term of trust and confidence which seems to have been added to the List of Issues [93] by the Claimant. The complaint is unparticularised so that the basis of the complaint is unclear. On the basis of the Tribunal's findings of fact and on the basis of the conclusions reached by the Tribunal, the Tribunal was not satisfied that the Company made unreasonable changes to the Claimant working patterns without agreement and was not satisfied that this gave rise to, or contributed to, any breach of the implied term of trust and confidence, or was causative of her resignation.

Conclusion as to constructive dismissal

781. The Claimant relied upon the various alleged breaches set out above as individually giving rise to a breach of the implied term of trust and confidence as well as cumulatively giving rise to a breach of the implied term of trust and confidence [66]. On the basis of the Tribunal's conclusions regarding the individual alleged breaches, the Tribunal was not satisfied that these matters, taken together, had given rise to a cumulative breach of the implied term of trust and confidence. It is significant that the very act being relied upon by the Claimant as the last straw, namely a communication from her employer asking for her consent to mediation, was indicative of her employer seeking to take steps to continue the employment

relationship which was the reverse of the Company seeking to conduct itself in a matter calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. In any event, based on the Tribunal's conclusions as set out above, the Tribunal was also satisfied that the Company had not so conducted itself prior to 27 July 2022. The Tribunal was not satisfied that there was any repudiatory breach of contract entitling the Claimant to resign and claim to have been constructively dismissed.

782. It also follows from the Tribunal's conclusions as to the various complaints of discrimination to the effect that the Company had not unlawfully discriminated against the Claimant, and its conclusions as to the complaint of constructive dismissal, that the Tribunal was not satisfied that any of the matters being relied upon by the Claimant as having given rise to her resignation amounted to unlawful discrimination so as to cause her resignation to amount to a discriminatory dismissal.

Notice pay

783. The Claimant resigned with immediate effect. Having concluded that her resignation did not amount to a dismissal, it follows that there was no entitlement to notice pay as she gave no notice.

Conclusion against Second and Third Respondents

784. Some time was spent at the start of the hearing, and later during the hearing, identifying which of the complaints were also complaints against the individual Respondents, and, if so, which individual Respondent, and then amending the List of Issues accordingly. Although the complaints of constructive dismissal and the complaints under the statutory flexible working provisions were able to rely upon actions on the part of the Second and / or Third Respondent, on the basis that their actions were effectively the actions of the First Respondent, these were obviously complaints where any liability would only have rested with the First Respondent, as the Claimant's employer, and not the Second and Third Respondents as individuals. As far as the complaints which were made under the Equality Act 2010 were concerned, the Claimant had identified a number of complaints where individual liability on the part of the Second and / or Third Respondents was being alleged in addition to any liability on the part of the First Respondent, as the Claimant's employer. However, whilst the Claimant's Further Particulars set out factual allegations against the Second and Third Respondents, and the List of Issues, as amended, then identified those allegations which were also made against one or other of the additional individual Respondents, neither the Further Particulars nor the List of Issues identified the statutory basis upon which liability was being pursued against the individual Respondents. However, Mr Husain, on behalf of all of the Respondents did not seek to dispute that the actions of the Second and / or Third Respondents, where they were specifically cited as individual Respondents in relation to those actions, were capable of giving rise to individual liability (which would have been through the provisions of Equality Act 2010 sections 110 to 112), although clearly this depended upon it being established that there was a contravention of the Equality Act 2010 in the first place. However, on the basis of the Tribunal's conclusions set out above, by which the Tribunal has not found there to have been a contravention of the Equality Act

2010, it follows that the conclusions of the Tribunal also mean that liability on the part of the Second and / or Third respondents has not been established.

Outcome

785. In conclusion, it follows that the decision of the Tribunal is that none of the Claimant's complaints succeed so that the complaints made against all of the Respondents are dismissed.

Employment Judge Kenward
Approved on 8 February 2025

Judgment & Reasons sent to the parties on

11 February 2025

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For the Tribunal Office: